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GOVERNMENT GAZETTE

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SUPPLEMENT

(SUPLEMENTO)

GOVERNMENT OF GOA, DAMAN AND DIU

Labour and Information Department

Order

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The following award given by the Arbitrator, Justice K. Srinivasan, under Section 10-A of the Industrial Disputes Act, 1947 (14 of 1947) on a dispute between M/s. V. M. Salgaonkar & Brothers Private Limited, Vasco-da-Gama, and 15 other employers and the Goa Dock Labour Union, is hereby published as required vide provisions of section 17 of the Industrial Disputes Act.

By order and in the name of the Lieutenant Governor of Goa, Daman and Diu.

D. N. Barua, Secretary, Industries and Labour Department.

Panaji, 2nd June, 1970.

Award under Section 10-A of the Industrial Disputes Act, 1947 (14 of 1947) between M/s. V. M. Salgaocar & Brother Private Ltd., Vasco-da-Gama, and 15 other employers and the Goa Dock Labour Union.

Before Shri K. Srinivasan (Retired Judge)

ARBITRATOR

Between

1. Messrs. V. M. Salgaonkar & Brothers Pvt. Ltd., Vasco da Gama.
2. Messrs. Damodar Mangalji & Co. Ltd., Vasco da Gama.
3. Messrs. V. S. Dempo & Co. Pvt. Ltd., Panaji.
4. Messrs. Emco Goa Pvt. Ltd., Margao.
5. Messrs. S. Kantilal Pvt. Ltd., Margao.
6. Messrs. Shantilal Khushaldas & Bros. Pvt. Ltd., Margao.
7. Messrs. V. N. Bandecar & Co., Panaji.
8. Messrs. Agencia Ultramarina Pvt. Ltd., Vasco da Gama.
9. Messrs. Agencia Commercial Maritima Pvt. Ltd., Vasco da Gama.
10. Messrs. Parkot Bandecar Pvt. Ltd., Vasco da Gama.
11. Messrs. Timblo Pvt. Ltd., Margao.
12. Messrs. Panduranga Timblo Industrias, Margao.
13. Messrs. Pioneer Shipping Co. Ltd., Vasco da Gama.
14. Messrs. Agencia Geral Pvt. Ltd., Vasco da Gama.
15. Messrs. Saraswat Industries Ltd., Vasco da Gama.
16. Messrs. Indian Shipping Co. Ltd., Vasco da Gama.

And

General Secretary,

Goa Dock Labour Union, Vasco da Gama.

AWARD

The facts forming the historical background covering the last six or seven years and leading to the present reference of the dispute between the above 16 employers and their employees for arbitration under Section 10-A of the Industrial Disputes Act have to be set out in broad outline. Of these 16 employers, 13 dismissed 49 members of their bargecrew, and the two questions before me are: Whether the dismissals are justified; and whether during certain periods when the bargecrew worked for a lesser number of hours per day, the payment of proportionately less wages to them is proper.

The several employers are engaged in the extraction of iron ore. For the conveyance of the iron ore, barges are used. Each employers has one or more barges and upon each barge are employed on the average about 10 workmen, they being the Captain, and in some instances, Assistant Captain, Driver and/or Assistant Driver, and Kalasis (sailors). The mines are said to be situated about 30 miles from the harbour, and the two places are connected by two navigable rivers, the Mandovi and the Zuari. Mainly, however, the barges are plied only on the Mandovi river. According to the evidence, which is not in dispute, it takes about 4 to 5 hours, depending upon the state of the tide and the winds to go from the harbour to the loading point at the mines. Both at the loading point and at the place where

the ore is discharged either at a collecting spot at the harbour or directly on to the ship, other workmen handle the ore and not those employed on the barge itself. The duties of the bargecrew consist in taking the barge from the one place to the other, that is to say, in the actual navigation of the vessel itself. It is also not in dispute that the bargecrew stay on the barge all through the 24 hours. They are provided with provision for cooking and sleeping on the barge itself. The normal pattern of work was that the bargecrew had to be available on the barge and to perform their duties as and when they were called upon to do so, that is to say, when there were ships at the harbour waiting to be loaded. According to the Managements, adequate relief by way of weekly offs, leave and other privileges, were provided to the bargecrew to offset the requirement of their continued presence on the barge.

Prior to 1963, the Port, Dock and Water front Workers' Federation appears to have represented the bargecrew. Certain demands were made by that Union and upon the employers failing to meet their demands, the bargecrew went on strike. Eventually, a settlement was arrived at in the presence of the Conciliation Officer. One of the clause of the settlement was that the structure of the pay-scale, including the basic pay, dearness allowance, overtime, etc., should be examined by certain persons. Another clause provided that in taking disciplinary action against the workmen, the model standing orders embodied in the Industrial Employment (Standing Orders) Central Regulations should be followed pending certification of the draft standing orders submitted by the employer to the appropriate authority. This settlement was to be in force for three years from 1-9-1963. It appears that the particular clause relating to the examination of the wage structure was not implemented for reasons that are not quite clear. In the second half of 1963, the Goa Dock Labour Union came into existence, and in 1964, this Union presented a charter of demands. According to the statement of the Union, and this fact is supported by the evidence, the Government of Goa intervened when a strike was launched. An agreement was reached on 19-6-1964, wherein certain interim reliefs were granted. It was also agreed that Shri Dayanand Bandodkar, the Chief Minister of Goa, should examine the wage structure and give his award before the 15th of August, 1964. It is common ground that the Chief Minister did not do so. Thereafter, the Union took recourse to direct action. It is said that the workers were instructed to work only for 8 hours a day in pursuance of the directive of the Union. At this stage, the Government again intervened and conciliation proceedings were started. On various dates between the 5th and 30th September, 1964, agreements were entered into between the employers (barring a few) involved in this reference and the workmen represented by the Union. One of the terms of the agreement, broadly speaking, related to the wage scales and it was agreed that consolidated wages as stipulated in the agreement should be paid. It was further stated therein that these revised wage scales represented composite wages, inclusive of all allowances and had been agreed upon without effecting any change whatsoever of the system of work, that is, round the clock as in the past. The other terms of the agreement covered issue of appointment letters, conferment of permanancy status, weekly offs, leave, provident fund, holidays, etc. This agreement however did not specifically touch upon the application of the model standing orders. It is the contention of the Managements that to that extent the earlier settlement of 1963 continued to apply and that in any event, the application of model standing orders was incorporated in the appointment letters issued to the bargecrew, which was accepted by them as one of the conditions of service.

In 1966, the bargecrew demanded under threat of strike that the Central Wage Board recommendations relating to the port and dock workers at major ports should also be applied to them. The employers contended that those recommendations were not applicable to the bargecrew, but it was finally agreed on 24-11-1966 that the question should be got clarified by reference to the Central Wage Board itself; and that in the meantime, the employers would make certain *ad hoc* payments in the light of the Central Wage Board recommendations. Once again, in 1967, the Wage Board granted a second interim relief to port and dock workers, which relief was also demanded by these bargecrew. On the refusal of the Managements to implement those recommendations, a strike ensued and finally a settlement was reached on 15-11-1967. A reference under Section 10 of the Indusrtrial Disputes Act was made by the Government with regard to the applicability of those recommendations of the Central Wage Board and those proceedings were pending before the Industrial Tribunal on the date on which the strike was launched on 16-2-1969.

It is the contention of the Union that early in 1968, the Union approached the employers with a request that the hours of work of the bargecrew should be specified and that by the same letter, the Union also informed the Managements that it desired to terminate the agreements of September, 1964. The fact that any such demand was made in January, 1968, or any notice of termination of the agreements of 1964 was given, as claimed by the Union, is denied by the Managements. It was also claimed by the Union that as under Chowgule's and Company Private Limited, another employer engaged in the same line of business, the bargecrew worked only between 7 A. M. and 6 P. M., a similar pattern should be followed by these Managements. According to the Union, this demand was not conceded. It is claimed that the Union at its General Body meeting decided to work to rule, that is to say, only from sunrise to sunset, and in accordance with this decision, with effect from 16-2-1969, the bargecrew worked only for 11 hours during day-time. For the month of February, 1969, accordingly the Managements in question paid wages only on the basis of work of 11 hours out of 24. Thereafter, insisting that the employer had no right to demand more than 8 hours work a day from the employee further restricted their hours of work from 10 A. M. to 6 P. M. with effect from 9th March, 1969. During the period commencing from 16-2-1969, the several employers started to take disciplinary action against the bargecrew for the reason that they failed to work according to the contract of service and in violation of the terms of the earlier agreement and the conditions contained in the appointment letters. Thereupon, the Union called for a total strike with effect from the 15th of May, 1969. In the face of this situation, several governmental authorities, both those of the Government of Goa and of the Central Government, intervened and it is common ground that a conference of the employers and the Union was called for at Delhi on 19-7-1969. A settlement was reached thereat, wherein it was agreed that the dismissal of 49 members of the bargecrew, who stood dismissed by the several employers, should be referred to arbitration under Section 10-A of the Industrial Disputes Act and that the same arbitrator should also examine whether the cutting short of the wage and other allowances for the period of the partial strike between 16-2-1969 and 15-5-1969 was proper. Simultaneously, it was agreed that the question of the proper wage structure should be referred under Section 10 of the Industrial Disputes Act to the Industrial Tribunal.

It is against this background that the following two questions stand referred for arbitration:

> (1) Whether the dismissal of the bargecrew, numbering 49, by the bargeowners is justified; if not, to what relief the bargecrew concerned are entitled? and
>
> (2) Having regard to the wage structure and pattern of working of the bargecrew obtaining up to 15-2-1969, what should be the wages and other allowances, if any, to which the bargecrew are entitled for the period 16-2-1969 to 14-5-1969?

Each of the employers has filed a written statement claiming in general that the strike was illegal, being in contravention of the 1964 agreement and that it was also launched during the pendency of proceedings before the Industrial Tribunal. It was further claimed that the disciplinary action against the striking workers was conducted fairly and properly and the orders of dismissal were made after a dispassionate consideration of the record of enquiry. On the other hand, the Union in its 'Statement of Claims' states that the strike was not illegal but perfectly justified, that the employers' act in singling out workmen for disciplinary action displayed malafides, vindictiveness, victimisation and unfair labour practice, and further that the enquiries were conducted without any regard for fairness and gave no opportunity to the workman to defend himself. In addition, it is also asserted that the 1964 agreement was terminated by due notice and that the action of the Managements, purportedly taken under the Model Standing Orders, cannot be sustained for the reason that the Standing Orders could not and did not apply.

I shall first of all deal with the contentions of a general nature. The other contentions will be considered when the case of each dismissal is taken up.

At the outset, Mr. Damania, learned counsel for the employers, put forward some arguments with regard to the scope of the arbitration proceedings. Now, the specific question that is before me is, whether the dismissal of the bargecrew is justified. The frame of the question would suggest that the arbitrator is given full scope to examine

the justifiability on the merits of the case as well irrespective of the conclusion reached by the employer, and not merely whether in proceeding to dismiss the employee, the employer followed the normal procedure which gave an adequate opportunity to the employee to know what the charge was that he had to face an whether the enquiry was not vitiated by anything done or left undone by the employer, which would render the ultimate order of dismissal open to attack. In *Indian Iron and Steel Co.* V. *Their Workmen* (1958-I L. L. J., 260), the question to what extent the Industrial Tribunal could interfere with the order of dismissal passed by the employer after a departmental enquiry was considered and in this decision, in laying down certain principles, it was observed:

> «Undoubtedly, the management of a concern has power to direct its own internal administration and discipline. But the power is not unlimited and when a dispute arises, Industrial Tribunals have been given the power to see whether the termination of service of a workman is justified and to give proper relief. In cases of dismissal on misconduct, the Tribunal does not however act as a court of appeal and substitute its own judgment for that of the management. It will interfere (1) when there is a want of good faith, (2) when there is victimisation or unfair labour practice, (3) when the management has been guilty of a basic error or violation of a principle of natural justice, and (4) when on the materials, the finding is completely baseless or perverse.»

Mr. Damania also brought to my notice another decision where the question before the Industrial Tribunal was couched in the same form as in the present case, being «Whether the dismissal of Shri... by the management of the said tea estate is justified.» It is reported in *Balipara Tea Estate* V. *Its Workmen* (1959-2 L. L. J., 245). The following observations were made in that decision regarding the scope of the Tribunal's powers:

> «It has been contended on behalf of the appellant and, in our opinion, rightly, that the Tribunal has misdirected itself in so far as it has judged the case against the workman concerned afresh on its merit as if it a trial for the conduct of a criminal offence... and that in so doing, the Tribunal was not only sitting as a court of appeal on the order of dismissal passed by the management, even though it did not find any malafides or want of good faith or any irregularity in the proceedings taken by the management against the workman concerned, but it had also laid down a wrong line of approach to the case. The Tribunal misdirected itself in so far as it insisted opon conclusive proof of the guilt to be adduced by the management in the enquiry before it. It is well settled that a Tribunal has to find only whether there was justification for the management to dismiss an employee and whether a case of misconduct had been made out at the enquiry held by it. On the merits also, the Tribunal misdirected itself in so far as it based its award on the absence of the field book ....»

Pointing out that the particular document had not been called for by the other side and that no inference against the management could be drawn from the non-production of the document, and further that the Tribunal itself had failed to call for the document if it felt that that document was relevant or necessary, the judgment proceeds:

> «In this case, the award suffers from the inherent weakness of the approach made by the Tribunal in determining the controversy before it. It had not got to decide for itself whether the charge framed against the workman concerned had been established to its satisfaction. It had only to be satisfied that the management was justified in coming to the conclusion that the charge against the workman was well founded. If there had been a finding by the Tribunal that the management had been actuated by any sinister motives or had indulged in unfair labour practice or that the workman had been victimised for any activities of his in connection with the trade union, it might have had reasons to be critical of the enquiry held by the management ...» It may however be pointed out that the specific point whether the frame of the question using the present tense, being «Whether the dismissal... *is* justified» conferred upon the Tribunal any greater scope than in a case where the question was whether the dismissal *was* justified was not considered in the above decision. I shall assume for the present that the particular form of the question does not make any difference and proceed to deal with the further aspect of the argument.

It is next the contention of Mr. Damania that the mere fact that the management has led evidence with regard to the alleged misconduct leading to dismissal before the Tribunal would not lead to any inference that it was specifically calling upon the Tribunal to decide the case upon its merits, discarding the management's own findings in its departmental enquiry. This question arose in *Ritz Theatre V. Its Workmen*— (1962-2 L.L.J., 498). In that case, the workmen's contention was that the departmental enquiry instituted by the employer was unfair, unjust and inequitable and that therefore the termination of the service was not justified. When the trial began before the Tribunal, the employer shought permission to lead additional evidence and the employees equally urged that they should be allowed the opportunity to adduce additional evidence. Both the parties were so permitted. In addition to the evidence so led, the employer produced before the Tribunal all the records of the domestic enquiry containing the evidence recorded therein and the report by the enquiry officer. The Tribunal held that because the employer had sought permission to lead additional evidence, it was open to it, the Tribunal, to consider the merits of the dismissal in the light of the whole of the evidence before it and that by reason of the action of the employer in placing such additional evidence, the jurisdiction of the Tribunal to deal with the merits of the dispute became wider, and proceeded to deal with the question before it on that basis. The complaint in the appeal before the Supreme Court was that the Tribunal had exceeded its jurisdiction. After restating the general limits of the jurisdiction of the Tribunal, the following observations were made:

> «It has also been held that if it appears that the departmental enquiry held by the employer is not fair in the sense that a proper charge had not been served on the employee or proper or full opportunity had not been given to the employee to meet the charge, or the enquiry has been affected by other grave irregularities vitiating it, then the position would be that the Tribunal would be entitled to deal with the merits of the dispute as to the dismissal of the employee for itself. The same result follows if no enquiry has been held at all. In other words, where the Tribunal is dealing with a dispute relating to the dismissal of an industrial employee, if it is satisfied that no enquiry has been held or the enquiry which has been held is not proper or fair or that the findings recorded by the enquiry officer are perverse, the whole issue is at large before the Tribunal. This position is well settled.
>
> «In regard to cases falling under this last category of cases, it is however open to the employer to adduce additional evidence and satisfy the Tribunal that the dismissal of the employee concerned is justified, and in such a case, the Tribunal would give opportunity to the employer to lead such evidence, would give an opportunity to the employee to meet that evidence and deal with the dispute between the parties in the light of the whole of the evidence thus adduced before it. There can be little doubt even about this position».

It was urged before the Supreme Court that in a case where the employer rested his case on the fact that an enquiry had been held but he was apprehensive about the validity of the enquiry and sought permission to lead evidence to justify his action before the Tribunal, it should be held that the Tribunal is entitled to deal with the merits of the case for itself, because the course adopted by the employer in seeking to adduce additional evidence should by itself justify an inference that he conceded that the domestic enquiry had not been proper. Their Lordships of the Supreme Court repelled this argument. They observed:

> «In enquiries of this kind, the first question which the Tribunal has to consider is whether a proper enquiry had been held or not. Logically, it is only where the Tribunal is satisfied that a proper enquiry has not been held or that the enquiry having been held properly the findings recorded at such enquiry are perverse that the Tribunal derives jurisdiction to deal with the merits of the dispute. It is quite conceivable and in fact it happens in many cases that the employer may rely on the enquiry in the first instance, and alternatively and without prejudice to his plea that the enquiry is proper and binding, may seek to lead additional evidence. It would, we think, be unfair to hold that merely by adopting such a course, the employer gives up his plea that the enquiry was proper and that the Tribunal should not go into the merits of the dispute for itself. If the view taken by the Tribunal was held to be correct, it would lead to this anomaly, that the employer would be precluded from justifying the dismissal of his employee by leading addi-

tional evidence, unless he takes the risk of inviting the Tribunal to deal with the merits for itself, because as soon as he asks for permission to lead additional evidence, it would follow that he gives up his stand based on the holding of the domestic enquiry. Otherwise, it may have to be held that in all such cases no evidence should be led on the merits unless the issue about the enquiry is tried as a preliminary issue. If the finding on that preliminary issue is in favour of the employer, then no additional evidence need be cited by the employer. If the finding on the said issue is against him, permission will have to be given to the employer to cite additional evidence. Instead of following such an elaborate and somewhat cumbersome procedure, if the employer seeks to lead evidence in addition to the evidence adduced at the departmental enquiry and the employees are also given an opportunity to lead additional evidence, it would be open to the Tribunal first to consider the preliminary issue and then to deal with the merits in case the preliminary issue is decided against the employer. That, in our opinion, is the true and correct legal position in this matter».

It would follow from the above decisions that the first question for determination is whether the departmental enquiry was or was not held, and if it was held, whether the proper procedure was followed therein; and further, whether the findings at the enquiry are perverse within the meaning given to that expression by the decisions. If the enquiry is not vitiated in any manner, then, generally speaking, the action of the employer would have to be sustained. But, if the enquiry is vitiated, it would appear to be open to the Tribunal to enter into the merits of the case and decide for itself whether the charge against the employee had been made out on the evidence led at the domestic enquiry and also on the basis of the further evidence that might be led before the Tribunal. But, before the Tribunal could do so, it has to be emphasised that the Tribunal is constrained by the restrictions upon its jurisdiction indicated in the decisions cited above.

Mr. Sowani, appearing for the workers, however disputes this point on the ground that what all the above decisions state apply only to *statutory tribunals* appointed under the Act and not to an arbitrator functioning under S. 10-A of the Act. He has drawn my attention to a decision reported in *Anglo-American Tea Trading Co.* V. *Its Workmen* (1963-2 L. L. J., 752). (I may mention that this happens to be decision rendered by me as a Judge of the Madras High Court). In that case, the view was taken that an arbitrator appointed under Section 10-A of the Industrial Disputes Act under a specific agreement between the parties is not a statutory arbitrator deriving his jurisdiction under any statute and that he is a private tribunal set up by an agreement of the parties. That was a case where the issue of a writ of certiorari was sought to quash an award made by such an arbitrator audit was contended that the arbitrator had overstepped the limits of his jurisdiction in interfering with the dismissal of the workmen effected after a proper enquiry. It also appears from the facts that the employer himself enumerated certain additional charges against the concerned employee in his pleadings before the arbitrator and examined a number of witnesses in support of the charges and thereby invited the arbitrator to give his findings on the merits of the charges, including those that were not dealt with during the domestic enquiry, and in those circumstances, it was held in that decision that having asked for an enquiry by the arbitrator on the merits of the charges, including the additional charges brought forward at the time of the enquiry by the arbitrator, it was not open to the employer to complain that the arbitrator was not competent to deal with the evidence or reach his own conclusion. It is true that in this decision, the view was taken that an arbitrator under Section 10-A of the Act is not fettered in the same way as a statutory Industrial Tribunal. Indeed, it is stated by learned counsel on both sides that there is no other decision which has deal with such a question. Nevertheless, in dealing with the matters before me, I shall restrict my enquiry in the first instance to the question whether the domestic enquiry was properly conducted and is not vitiated by any feature preceding or following it, whether in coming to the conclusions leading to the dismissal of the workmen, the enquiry officer was supported by evidence or record, that is to say, whether the findings are or are not perverse, and whether there is any evidence of victimisation or unfair labour practice. It is beyond doubt that in cases where the proceedings stand vitiated by one or more of the above features, it is certainly open to the artbitrator to examine the evidence afresh and render a decision therein.

Leaving out certain of the cases where the charges were of a different type, in the generality of these cases, the charges framed against the concerned workmen arose out of the partial cessation of work embarked upon by them on and from the 16th of February, 1969. It is not disputed by the workmen that there was such cessation of work. In the first instance, the workmen refused to work between 6 P. M. in the night to 7 A. M. on the following morning, between 16-2-1969 and 8-3-1969, from 9-3-1969 onwards, they further restricted their hours of work only to between 10 A. M. and 6 P. M. in the evening. This went on till a complete strike was launched with effect from 14-5-1969. These facts are not in dispute. In the majority of cases, with a very few exceptions, show-cause notices were issued by the Managements. It is admitted by the other side that wherever replies were submitted to these show-cause notices, those replies were furnished by the Secretary of the Goa Dock Labour Union. When these show-cause notices were followed in due course by chargesheets, these chargesheets were not replied to at all. The stand taken by the Union on behalf of its workmen was that they were justified in restricting their hours of work to 11 hours out of 24 in the first instance and to 8 hours out of 24 later. The restriction of hours of work contrary to what the prevailing practice was previously (again there is no dispute that prior to 16-2-1969 the workmen were to be available on the barge throughout the 24 hours of the day) is undoubtedly a 'strike' within the meaning of Section 2(q) of the Industrial Disputes Act. It is unnecessary to cite any authority, because this position is conceded by Mr. Sowani. In the light of these facts, it is argued by Mr. Damania, for the Managements, that the strike was illegal for two reasons: firstly, that it was during the pendency of an agreement entered into between the parties in September, 1964; and secondly, that it was also during the pendency of certain proceedings before the Tribunal. On a question of fact, it is also alleged that the Union did not give any notice terminating the settlement of September, 1964, which settlement, though according to a term therein was to ensue only up to 31-12-1967 continued to be in force by virtue of Section 19 (2) of the Industrial Disputes Act. In any event, the contention on behalf of the Managements is that the strike was totally unjustifiable for the reasons to be set out in due course.

I shall first of all take up the question whether the settlement of September, 1964, was or was not terminated. This necessarily takes us to the question of the activities of the Union and the steps it took in the matter of the termination of the agreement. In this regard, we have the solitary testimony of Mr. Mohan Nair, the General Secretary of the Goa Dock Labour Union. This Union which came into existence in 1963 was registered on 31-8-1963. According to its constitution, the Union has certain official bodies such as the Executive Council, the General Council and the Secretariat, which consist of members elected thereto. The Secretariat in particular is to consist of 9 officials elected by the Executive Council, and they are to formulate the general policy of the Union subject to the approval of the Executive Council. Over and above all these, there is the General Body. In addition to these bodies, there appears to have come into existence a body known as the Action Committee, which does not appear to be contemplated in the constitution and rules of the Goa Dock Labour Union. Mr. Mohan Nair stated that such bodies were constituted by a meeting of the Executive Council on 15-8-1967 for the various units of the bargecrew, taken employerwise. The Action Committee came into existence by way of elections. The result of these elections was placed before the Executive Council on 3-10-1967, so we are told by Mr. Mohan Nair in his evidence. The General Secretary was to be the Chairman of the Action Committee and the decisions of the Action Committee were to be binding on the Union. According to Mr. Mohan Nair, the functions of the Action Committee were to look after the interests of the bargecrew, take decisions with regard to negotiations and such other matters. For the proceedings of the Action Committee, no records were at all maintained. But it is stated that these decisions of the Action Committee would be incorporated in the proceedings of the Executive Council. There is however no record to show which persons constituted the Action Committee with regard to the bargecrew of each employer at any particular point of time, except the proceedings of the Executive Council dated 3-10-1967, which purports to record the names of the persons elected to be members of the Action Committee. (This is of some importance, for one of the grounds taken in attacking the dismissals is that the employer was activated by prejudice and indulged in victimisation or unfair labour practice in deciding to dismiss particular persons. There is however nothing to show that the names of the members of the Action Committee were communicated to the employer). It is

claimed that the agreement of September, 1964, was terminated by a letter dated 24-1-1968. One copy of such letter was produced in evidence as Ex. X-4. It was claimed that such letters were delivered to the employers through the Union Office peon and the evidence of that delivery was placed before me in the shape of entries in the Outward Register and the Peon Book, which purports to contain some acknowledgments of persons whose identity is unknown and who it is said were either peons or clerks of the office of the employer. It may be noted even here that this document containing the purported acknowledgments of the employer was not put to any witness examined on behalf of the Employer. The argument that the management did not examine the particular person who signed the acknowledgment has no force whatsoever, for the existence of such a document proving the delivery of the letter or even the fact that such letters were delivered to the employers and acknowledged at their offices was not specifically stated in the statement of claims of the Union. It is also somewhat strange that the delivery of these letters should have been effected in this somewhat unofficial manner. One would expect that such an important decision as the termination of a valid agreement between the parties would have been made known to the other party by means of a registered letter.

Mr. Mohan Nair stated in his evidence that from January, 1968, onwards, he was in contact with the employers seeking to fix the hours of work. According to him, one other employer, Chowgule, engaged in the same line of business, had introduced the system of 11 hours of work with overtime pay, and Mr. Mohan Nair claimed that he was asking the other employers to follow that pattern. Failing to get a favourable response from these employers, the matter is said to have been taken up by the Action Committee, which decided to restrict the working hours. As stated already, no proceedings of the Action Committee were ever maintained, but it is stated that this decision of the Action Committee was placed before the Executive Committee on 19-12-1968 and again before the General Council on 26-1-1969, wherein the proposed action of the Action Committee was approved. The book of proceeding of the Union which is said to contain the proceedings of the Executive Council and the General Council was produced in evidence. It was conceded by Mr. Mohan Nair that this is the only book covering the entire period from the inception of the Union down to the present day and it is also conceded by him that this book does not record all the proceedings. According to him, even before 16-8-1967, unofficial Action Committees were created by him as an administrative arrangement to deal with particular problems. Mr. Mohan Nair, who as the General Secretary has complete knowledge of all the affairs of the Union, admitted in cross-examination that he cannot say who were all the members of the Action Committee and that there was also no record of the proceedings of those Action Committees. Now, prior to the agreement of September, 1964, there was a threat to reduce the working hours to 8 hours a day and it was subsequently thereto that the agreements of September, 1964, were entered into. Mr. Mohan Nair stated that he was unable to find in the minutes book any record to show which body took that decision. He admitted that there are some omissions in the minutes book, but nevertheless claimed that it was correctly maintained.

A circular letter marked as Ex. X-6 purporting to have been issued by the President of the Union was shown to Mr. Mohan Nair, who admitted that he had seen the original of that letter before the issue. This letter purports to record a resolution complaining that some persons were intending to attack the workers and office-bearers of the Union and that in particular there was an attack on the life of the General Secretary, Mr. Mohan Nair. The circular letter states that this resolution was that of the General Body meeting of the Goa Dock Labour Union held on the 1st of February, 1969. Mr. Mohan Nair stated in cross-examination that there was no such General Body meeting on that date as stated in that letter. Reverting to Ex. X-4, which purports to be the letter by which the September, 1964, agreement was terminated, Mr. Mohan Nair admitted that no office copy of that letter was maintained but that there are similar typewritten copies in the files relating to each company. He admitted also that a press statement was issued in March, 1969, by the Union setting out the entire history of the disputes between the employers and the employees and that in this statement also the fact that the 1964 settlement was terminated was not mentioned. In the numerous replies to the show-cause notices issued to the several workmen who stand dismissed, no specific statement is made that the September, 1964, agreement was terminated by notice. In the statement of claims submitted by the Union, though there is a statement that the settlement was terminated, the date of the letter by which that was done was not mentioned. Mr. Mohan Nair also admitted that subsequent to the termination of the agreement, he had been sending numerous reminders to the various employers with regard to fixing the hours of work and payment of overtime wages, but no copies of such reminders are produced, nor anything in the Outward Registers or the Peon Book is shown to indicate the issue of such reminders.

Immediately after the partial strike started, there were attempted conciliation proceedings. The report of the Conciliation Officer under Section 12(4) of the Act is marked as Ex. X-10. In this report, the Conciliation Officer has set out the stand taken by both the parties. Before the Conciliation Officer, the Union admitted that the previous practice was to work round the clock, but as that was no longer possible, they had restricted the hours of work and put forward the proposal before the Conciliation Officer that the normal hours of work should be between 7 a. m. and 6 p. m. and that any work beyond that period should be compensated for by overtime allowance at certain rates. The stand taken by the employers was that in entering into the agreement in September, 1964, the pay scale was fixed on the basis of work round the clock. They however were willing to consider the proposal put forward by the Union, but demanded that the bargecrew should resume the normal pattern of work. They also asserted that the hours of work had been unilaterally altered by the workers without giving any notice or trying to settle the matter by amicable means. Despite this assertion made by the employers, the Union did not put forward the claim at that time that the 1964 settlement relied upon by the employers was no longer in force having been terminated by notice. According to the report of the Conciliation Officer, what the Union stated was:

> «That is not possible for the bargecrew to resume night work and they could normally be expected to work only for 12 hours even though they had been working round the clock in the past and that there is no settlement in operation covering the matter».

It will be noticed that there was no specific claim that by suitable letters addressed to the managements, the Union had terminated the agreements in question, despite the assertion to the contrary by the managements.

The record of a particular meeting of the Executive Council appearing in the proceedings book of the Union was produced, apparently in support of the claim that the termination of the agreement was authorised by the Executive Council at its meeting on 3-10-1967. It will be recalled that at its meeting on 15-8-1967, the Executive Council had instructed the General Secretary to conduct elections for the formation of the Action Committee. The results of those elections were placed before the Executive Council on 3-10-1967. The resolution of the Executive Council is an interesting record. It reads thus:

> «General Secretary submitted the names of Action Committee of the bargecrew to the Council ...
>
> «Shri Nair furthr informed that the Action Committee had decided to go on a strike from 1st November, 1967, if the question of Wage Board recommendations were not made applicable. The Executive Council unanimously agreed to the decision of the Action Committee.
>
> «The following crew from various establishments were elected members of the Action Committee.»

Then the names of the members of the Action Committee are set down. The last sentence in the resolution above extracted contains an extrapolation in the minutes book, the added words being «which (decided to) terminated September, 64, agreements,» the words in brackets were interpolated. A perusal of the record leaves me with the impression that all the words should have been incorporated much later. It is indeed remarkable that even before the formation of the Action Committee was formally ratified by the Executive Council, it had «decided to terminate» the agreement; it is also curious to note that while in the earlier part of the proceedings, the Executive Council formally purports to agree with the decision of the Action Committee on the question of the strike to ensue if the Wage Board recommendations were not applied to the bargecrew, no such ratification of the proposed termination of the agreement is recorded in the proceedings, a feature that lends clear support for the view that the words extracted above should have been introduced in the record much later.

If indeed it was decided even on 3-10-1967 to terminate the 1964 agreements, which would normally expire on

31-12-1967, why was no notice given immediately and what was the reason for the delay till 24-1-1968, when letters are said to have been sent? Why was no mention of it made before the Conciliation Officer even as late as in February, 1969, when the point was specifically raised?

It is pointed out by Mr. Damania, for the Managements, that though several directors of the companies or their managers have gone to the box, the alleged copy of the letter by which the settlement was terminated or the Peon Book in which acknowledgments are said to have been obtained, was not shown to any of them. Nor is it the claim of Mr. Mohan Nair that a copy of this letter was produced before the Conciliation Officer. On a consideration of all of these circumstances, one cannot escape avoiding the feeling that the affairs of the Union have been conducted some what haphazardly and that no official body of the Union, such as the General Body or the General Council or the Executive Council appears to have functioned as one would expect them to function in the light of the constitution of the Union. It would not be too much to say that it was Mr. Mohan Nair who more or less in his individual capacity was running the Union. Of course, so long as the majority of the members of the Union followed his lead, there is nothing objectionable therein. But on the question whether any notice of termination of the settlement was given, it must be stated that the evidence does not establish that fact. It is unnecessary for me to express any view on the charge of the Managements that the records so belatedly produced are fabricated.

It is the contention on behalf of the Union that subsequent to 1964, there were two other agreements entered into in 1966 and 1967 by reason whereof the agreement of September, 1964, stood automatically terminated. I do not think that this contention can stand scrutiny. In 1966, a dispute arose regarding the applicability of certain recommendations made by the Central Wage Board. The contention of the Managements was that the bargecrew employed by them were not port or dock workers to whom alone those recommendations apply, but nevertheless in order to maintain industrial peace, certain concessions were given by the employers in the light of those recommendations. Again, in 1967, on the same basis, some additional interim relief was given. These settlements cover a specific aspect of the dispute between the Managements and their employees with regard to the claims made by the latter and while it may be an acceptable argument that to the extent to which the Managements had agreed to increase the pay or grant certain allowances, the relevant clauses of the 1964 agreement stood modified, it is too much to claim that the entirety of the agreement of 1964 stood abrogated by the subsequent settlements referred to, and indeed, Mr. Mohan Nair himself, in his evidence, only stated that «there were other agreements in 1966 and 1967 arising from the Central Wage Board recommendations and to that extent the 1964 agreement stood modified.» It cannot, therefore, be contended that by reason of these later agreements, the provisions in the 1964 agreement relating to the working hours were altered in any way.

Before dealing with the argument that the strike is illegal, I should mention that in the majority of cases, the ultimate order of dismissal is not based on a finding that the workman participated in an 'illegal strike' but only upon the wilful refusal to conform to the agreed pattern of work and that his conduct was subversive of discipline. The arguments on this head are thus more or less academic, but nevertheless as the justifiability of the dismissal may depend upon the illegality of the strike as well, I shall consider these arguments.

The agreement of September, 1964, was ubdoubtedly one that was arrived at in the course of a conciliation proceeding and that conforms to the definition of 'settlement' in Section 2(p) of the Act. Though the settlement was to ensue for a period of three years and would normally expire according to a term of that settlement on the 31st of December, 1967, under Section 19(2) of the Act, it «shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement». It is the contention of the Union that such a notice of termination was given in January, 1966, a contention which is denied by the Managements. Assuming for the purpose of argument that no such notice was given and that therefore the settlement or agreement of September, 1964, continued to be in force on the date on which the strike was launched, it is the argument of Mr. Damania, that the action of the Union in embarking upon a strike is contrary to the injunction contained in Section 23, for under sub-section (c) thereof, a strike by the workmen is prohibited «during any period in which a settlement or award is in operation in respect of any of the matters covered by the settlement or award». Obviously, if the strike is in respect of a matter covered by the 1964 agreement and if that agreement is in force, a strike is prohibited by S. 23(c) of the Act, and being in contravention thereof, would be an illegal strike under Section 24 of the Act. In the alternative, Mr. Damania urges that the strike is also prohibited under Section 23(b) of the Act, being «during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings». Now, it is common ground that in 1967, the Government of Goa did refer under Section 10 of the Act to the Industrial Tribunal the question whether the Central Wage Board recommendations were applicable to the bargecrew. It is admitted that the reference is still pending adjudication. It is therefore the contention that the present strike was launched in contravention of the prohibition under Section 23(b) and is therefore illegal under Section 24. On this point, it is urged by Mr. Sowani, for the Union, that the present strike was in pursuance of a demand which was totally unconnected with the subject-matter of the proceedings pending before the Industrial Tribunal and that therefore the prohibition under Section 23(b) would not apply. It is argued that if a specific matter is pending adjudication by a tribunal, such as, for instance, the justifiability of the dismissal of a particular workman, would it be proper to say that a demand followed by a strike upon a totally unconnected question, such as the wage structure in the industry, would be prohibited? It would be unreasonable, so it is argued, to hold that it would be, for such a dispute as envisaged above would be one which would have far-reaching effect upon the industry as a whole and having also an immediate impact upon the working conditions of the employees, and to prohibit an agitation over such a matter, solely because a comparatively trivial question is pending before the Industrial Tribunal, would not be a reasonable construction to place upon Section 23(b) of the Act. There is no doubt whatever that the prohibition contemplated by Section 23(b) is very broadly phrased. But Mr. Damania also points out in contrast to Section 23(c), where qualifying words are used, the prohibition of the strike being only «in respect of any of the matters covered by the settlement or award», there are no similar words of curtailment contained in Section 23(b) and that the prohibition is undoubtedly absolute. It appears to me that there is a reasonable construction to adopt, and indeed decisions appear to have held that this prohibition covers all strikes and lockouts, irrespective of the subject-matter of the dispute being different from the subject-matter of the dispute pending before the authorities mentioned in the section.

My attention has also been drawn to an analogous prohibition contained in Section 22, which applies to public utility services. Under Section 22(1)(d), a strike is prohibited «during the pendency of any conciliation proceedings before a Conciliation Officer and 7 days after the conclusion of such proceedings». It is urged by Mr. Sowani that the word 'any' does not occur in Section 23(b) and that it cannot therefore be said that the prohibition contained herein is in such absolute terms as that in Section 22(1)(d). It is not possible to interpret Section 23 on the basis of anything that is found in Section 22. Though there is force in what Mr. Sowani urges, namely, that this prohibition should not be regarded as so absolute as to bar an agitation by way of a strike in respect of a matter of some immediate importance, there is nevertheless no escaping the conclusion that the prohibition therein is not qualified in any way. I may however mention that the illegality of the strike, even accepting the arguments on behalf of the Managements, is not, in my opinion, a measure of the delinquency of the employee in going upon a strike, so much as the unjustifiability of the strike, which I have considered elsewhere.

It is next the contention of Mr. Damania that the dismissal of the workmen is justified on the ground that the standing orders provide for dismissal as punishment for participating in an illegal strike. It is also his further contention that by Clause 17 of the 1963 settlement, it was agreed between the employer and the employee that the model standing orders should govern disciplinary action. Even apart from that, and even accepting the position that there are no certified standing orders which applied to the establishments by force of the statute, the parties have agreed that the standing orders should govern their relations and a clause to that effect finds place in virtually every appointment letter that was issued by the Managements and accepted by the workers. It is pointed out under the model standing orders which have become so contractually rather than

statutorily applicable, Standing Order 14 includes striking work in contravention of the provisions of any law or rule having the force of law to be a misconduct which is punishable with dismissal. Certain decisions were cited in this regard to establish that if there are certified standing orders providing for such disciplinary action they could be lawfully followed. It is unnecessary to refer to these decisions in detail. I have however to examine the question whether these model standing orders were incorporated by reference in the contract of service between the parties, and whether by reason thereof the participation in an illegal strike does not invite the disciplinary action taken against the employee.

It is certainly not in dispute that the appointment letters wherever they were issued did contain a clause of this kind. It is in fact the contention of the employers in general that following the 1964 settlement, cyclostyled copies of appointment letters to be issued to the bargecrew were in fact supplied by the Goa Dock Labour Union. Ex. K-1 was produced in evidence by Messrs. Shantilal Kushaldas, one of the employers. This purports to be a letter written by Mr. Mohan Nair addressed to the above company and it reads:

> «I am herewith sending 150 copies of appointment letters to be issued to your bargecrew as per memorandum of settlement signed between you and this Union».

Mr. Mohan Nair admits this letter but denies that the cyclostyled copy of appointment letter attached thereto is the one sent by him. Now, in this copy of the appointment letter, the following clause finds place:

> «Furher, other existing conditions of service and practices will remain as before, and until such time the standing orders are not approved by the Government, the model standing orders would apply».

Whether or not this cyclostyled copy was sent by Mr. Mohan Nair, there is no denying the fact that appointment letters were in fact issued to the workmen containing a clause of the above description. Mr. Mohan Nair claims that as he was always against the application of model standing orders, he would not have sent a copy like this. Except for his statement in this regard, there is nothing to show that the application of model standing orders was ever resisted at any point of time by any one, least of all by the Union. Mr. Mohan Nair was at least aware that the various employers had issued appointment letters which for the most part had been accepted by the workmen. If he was so set against the application of the model standing orders, one would have expected the Union to have taken some action in that regard to get this specific condition deleted from the appointment letters. It is not stated that any thing was done on these lines, and these appointment letters which were issued in 1964 not only to most of the members who were already in the service of the companies but also to all the subsequent appointees and accepted by them, were not objected to in any way. Undoubtedly, then, participation in an illegal strike would be a misconduct within the meaning of the model standing orders, and therefore, if the contract specifically entered into by the workmen, and the right of the employer to punish a workmen even by dismissal in such circumstances cannot be gainsaid.

The question whether the strike was illegal is only of limited importance for a great deal would depend more upon the justifiability or otherwise of the strike rather than upon its alleged illegality. Whether or not the strike was illegal in the sense that it is prohibited by Section 23 of the Industrial Disputes Act, it is strenously argued on behalf of the Managements that the strike is nevertheless totally unjustifiable. It is pointed out that the strike was allegedly launched for the purpose of pressing the demand of the bargecrew for fixing the hours of work and overtime pay and for the reason that the Managements were unwilling to give any satisfactory consideration to this demand. It was the claim of the workers that one of the principal bargeowners engaged in this same line of business had fixed 11 hours of work for the crew and had also been granting overtime wages, which system the other Managements concerned in the present reference had been strenuously refusing to follow. Now, assuming that that was the state of things, which itself is not beyond question, what was the immediate background against which the strike was launched? In 1963, there was a settlement arrived at between the bargeowners and the then union which represented the bargecrew, the Marmagoa Port and Dock Workers' Union. To that settlement, Chowgule was a party as well as most of the managements figuring in the dispute. It was agreed then that as no adequate data was available regarding the payscale, overtime allowances, etc., and as the structure of the pay packets differed from bargeowner to bargeowner, the question should be examined by certain persons named in the agreement, who were called upon to give an award in that respect. In this settlement, holidays, weekly off and other matters were dealt with. One of the clauses of this agreement also stipulated that disciplinary action against the workmen should be decided in accordance with the standing orders which were at that time pending certification by the appropriate authority and pending such certification, the parties agreed that the model standing orders as embodied in the Industrial Employment (Standing Orders) Central Regulations, should be followed. This settlement was to ensue for a period of three years from the 1st of September, 1963. Round about that time, the Goa Dock Labour Union came into existence and it presented a charter of demands, one of which raised the question of the hours of work and overtime allowance. This demand was made on the 13th of May, 1964, and in due course the strike followed. Ultimately, a settlement was reached in the presence of the Conciliation Officer. This settlement incorporated a clause to this effect:

> «Clause 3: *Wage Scales:* The company and the Union agree to pay the bargecrew consolidated wages as stipulated in Annexure A and these wage scales would be applicable with retrospective effect from the 1st of September, 1963. These revised wage scales will be composite wages inclusive of all allowances and have been agreed upon without effecting any changes whatsoever of the system of work, that is, round the clock, which will remain as in the past. The workmen would be fixed into the grades with the differences and with one full increment on the 1st of January, 1965.»

It is seen that in the charter of demands presented by the Union, there was no specific demand with regard to the fixation of the wages, so that Clause 3 extracted above would appear to be something which is not on the face of it relatable to any demand put forward. But the significant point to notice is that the demand for *fixing the hours of work and overtime allowances,* which was indicated as the most important demand, was not specifically dealt with in this agreement. The internal evidence, if it may be so called, from that the contents of Clause 3, referring to wage scales, undoubtedly shows that that demand was taken into consideration and the expressions 'consolidated wages' and 'composite wages inclusive of all allowances' employed in Clause 3 do clearly establish that the wages were fixed so as to include such allowances for overtime as the parties might have considered to be just and appropriate in the circumstances. It is not worthy that in this agreement practically every other item of demand was dealt with, with the exception of the last demand for fixing hours of work and overtime allowance. It is hardly likely that the Union would have accepted this settlement if what is contended was the burning question, namely, the fixation of working hours and overtime allowances, had not been met in some manner or other. In some agreements, the expression «round the clock» it not found, but the equivalent expression «without any change in the system of work as in the past» finds place. On behalf of the Union, no attempt has been made to show that Clause 3 fixing the wage scales which speaks of composite wages, inclusive of all allowances, did not take into account the claim for overtime pay. It would have been easy for the Union to have shown that the wage scales that obtained prior to this settlement were substantially no different from the wage scales that were fixed under this settlement. If that were so, the contention that overtime allowance was not taken into account in arriving at this settlement might have some force. Nor was any attempt made by the Union to show that the basic wage given by Chowgule's was in the same range as the scales of pay given by these bargeowners and that Chowgule's granted overtime allowances over and above that basic pay. In his cross-examination, Mr. Mohan Nair admitted that the system of basic pay and overtime allowances existed in Chowgule's establishment even from 1963 onwards. If that were so, and if the agreement of September, 1964, did not go anyway towards meeting this demand on the part of the workers, it is very unlikely that the Union would have agreed to this settlement. From all points of view, it therefore appears to me that whether wholly or in part, the demand for overtime allowances was conceded to some extent by fixing the consolidated wage, so that the contention of the Union that no overtime allowance was granted is still erroneous, for it fails to take note of the specific statements contained in Clause 3 of that agreement.

Nevertheless, we may assume that the Union became dissatisfied with what it thought was a halfhearted concession of their demands made in 1964 and chose to press their demand

once again. What was the manner in which they did so? During the course of the hearing before me, what purports to be a copy of the strike notice was produced in evidence. This is Ex. X-3, dated 28-1-1969, and above the signature of the General Secretary, Mr. Mohan Nair, all the bargeowners of Goa were informed that as they had failed to settle the disputes regarding the payment of overtime allowance, the Action Committee had decided to grant 14 days' time to settle the dispute, failing which the bargecrew would restrict their working hours from 7 A. M. to 6 P. M. This copy saw the light of day only during the examination of Mr. Mohan Nair, who was the very last witness to be examined. It was not even shown to the witnesses of the Managements, some of whom are directors or managers of the companies. It is true that the Managements appear to have been aware that the strike was in the offing. But whether a notice of this description was in fact issued and the Union saw to it that these notices reached the hands of the bargeowner is exceedingly doubtful. I have referred to the fact that the records of the Union are lamentably inadequate to establish that any authoritative body of the Union took this decision, which is a very important decision both from the point of view of the workers and of their employers in that a strike of this kind would paralyse the industry. Mr. Mohan Nair practically admitted that the decision regarding the strike was taken by himself alone and claimed that the consitution of the Union vested him with such power. An examination of the constitution and the rules of the Union does not support the stand which he takes.

I have already referred to the fact that while the strike started with the bargecrew restricting their hours of work to 11 hours in the day, it was later further restricted to 8 hours from the 9th of March, 1969. A total strike was launched from 14th May, 1969. A cyclostyled copy of a notice was produced in evidence by Mr. Mohan Nair and it marked as Ex. X-8. This purports to be the resolution adopted by the Action Committee at its meeting held on May 11, 1969. No records have been produced to show that this important decision is reflected in any proceeding of any of the authoritative bodies of the Union, such as the General Body, the General Council or the Executive Council.

It is true that the fact that no notice was given cannot render the strike illegal, for this is not a public utility undertaking governed by Section 22 of the Industrial Disputes Act. That the records of the Union do not show that any authoritative body of the Union took the decision cannot also be of great importance, for the fact is clear that the entire body of workers did take part in the strike. But nevertheless one has to see whether the strike was justified. In examining this question, one has necessarily to take note of the state of things which obtained between 1963 and 1969. I have pointed out how Chowgule's had a system of basic pay and overtime allowances even in 1963, despite which the settlement of the year 1963 did not deal with this demand. This demand which was raised early in 1964 was dealt with in the agreement of September, 1964, to which I have already made reference. It is conceded by Mr. Mohan Nair that that agreement was in force till 31st December, 1967, according to its tenor, and that to obviate any doubts, a notice was in fact issued by the Union putting an end to that agreement. I have dealt with the evidence with regard to the issue of that notice. Assuming that that 1964 agreement was not in force and that the Union felt once again that the question of pay and overtime allowances should be agitated afresh, were there no courses open to it except to launch a strike? It is well understood that a strike is a legitimate weapon in the armoury of labour for the purpose of collective bargaining and is generally resorted to when all the avenues of settlement have been explored and found to yield no tagible results. One can visualise a sudden strike following an unespected occurrence or to meet an urgent situation. For instance, if an employer in the purported exercise of his authority chose to deal with a worker or employee in a manner indicative of victimisation or unfair labour practice, it may be easily visualised that the workers, though adequate relief could be obtained by resort to proceedings before the tribunals, might yet be moved by sudden outburst of passion and they might embark upon a strike. That is not such a situation which we meet in the present case. The Industrial Disputes Act provides adequate machinery for settlement of disputes of this kind which affect the industry as a whole. It was open to the Union to have raised the dispute before the Conciliation Officer or to have moved the Government for a reference of the dispute to the Tribunal, and if these attempts to secure a legitimate airing of their grievances through appropriate statutory bodies failed, one might understand the launching of a general strike. But no attempt was made to approach the authorities. When the workers had accepted a certain situation during the previous six years between 1963 and 1969 without any agitation, one cannot conceive how the situation could have become so urgent or desperate that a strike alone could be thought necessary to be resorted to in ventilation of their grievances.

In a case reported in *Chandramala Estate* V. *The Workmen* (1962 L. L. J., 243), an allowance which the workmen had been receiving was stopped from the year 1949. In 1955, a demand was made by the workmen for the restoration of his allowance along with other demands. Conciliation proceedings failed. Without waiting further and without asking the State Government to make a reference under Section 10 of the Industrial Disputes Act, the workmen went on strike. The strike was withdrawn a few days later. The disputes were referred to adjudication and one of the items referred for adjudication related to the wages for the strike period. The Industrial Tribunal allowed 50 per cent of the wages for the strike period and the matter came before the Supreme Court in appeal. It is observed herein, after noticing that the Union resorted to the strike without seeking to move the Government under Section 10 of the Act:

> "It has been urged on behalf of the appellant that there was nothing in the nature of the demands to justify such hasty action and in fairness the Union should have taken the normal and reasonable course provided by law by asking the Government to make a reference under the Industrial Disputes Act before it decided to strike. The main demands of the Union were about the *kambli* allowance and the price of rice. As regards the *kambli* allowance, they had said nothing since 1949 when it was first stopped till the Union raised it on the 9th August, 1955. The grievance for collection of excess price of rice was more recent, but even so, it was not of such an urgent nature that the interests of labour would have suffered irreparably if the procedure prescribed by law for settlement of such disputes through industrial tribunals was resorted to. After all, it is not the employer only who suffers if production is stopped by strikes. While on the one hand it has to be remembered that a strike is a legitimate and sometimes unavoidable weapon in the hands of labour, it is equally important to remember that indiscriminate and hasty use of this weapon should not be encouraged. It will not be right for the labour to think that for any kind of demand a strike can be commenced with impunity without exhausting reasonable avenues for possible achievement of their objects. There may be cases where the demand is of such an urgent and serious nature that it would not be reasonable to expect labour to wait till after asking the Government to make a reference. In such cases, a strike even before such a request has been made may well be justified. The present is not however one of such cases....."

It seems to me that these observations apply with full force to the present case.

In meeting these arguments, Mr. Sowani, for the Union, contends that the previous history of the disputes between the workers and their employers has shown that unless a strike was launched, the employer has never conceded anything. It is pointed out that prior to the agreement of September, 1964, there was a strike. Again, there was a strike before the employees would agree to grant the interim benefits of the Central Wage Board's recommendations. It is said that strike was resorted to on those occasions because of the lack of prompt action by the Government in directing references to the statutory bodies. It seems to me that solely for the reason that on one or two occasions in the past the workers had embarked upon a strike without having resorted to the machinery provided under the Act, it does not follow that their present act could be justified on that ground. On behalf of the workers, one Mr. Tayade, Deputy Chairman of the Dock Labour Board, was examined to speak to the increased volume of work handled at the port, most of which related to handling of the iron ore. Basing himself upon this fact, Mr. Sowani contended that the workers are called upon to work more arduously than in the past and the Managements in insisting upon the workers working all the 24 hours of the day took no note of the hardness of the task imposed upon the workers. The short answer to this is that merely because the volume of iron ore handled at the port had increased, it does not necessarily follow that the same number of barges or the same number of crew were handling the entire increased tonnage. That is manifestly impossible. It has been elicited in the evidence that at the best the

barges make on an average 25 trips per month. To explain the matter further, the mines from which the ore is brought are situated about 30 miles upstream from the harbour. To cover this distance, it takes about 3 to 5 hours. At the loading point at the mines, the barges have generally to wait for some time ranging from 1 to 3 hours, depending upon the method of handling the ore in loading the barge employed by the particular employer. After reaching the harbour, the loaded barge has again to wait alongside the steamer to take its turn for unloading. While the unloading might take an hour or two, the waiting time itself might run into anything from 3 to 4 hours. In effect, therefore, the barge makes one return trip per day and the actual time spent in moving the barge from the mines to the port and the port to the mines would be about 10 hours, slightly more or less. It is admitted that the actual loading operations at the mine head and the unloading operations either at the ship or at any other unloading point specified in the harbour limits is *done not by this crew but by totally different personnel.* It would be seen from this therefore that the mere fact that the tonnage of ore handled at the port has increased does not immediately lead to the conclusion that these workers have been working for longer hours than in the past. It is said that during the times when the barge is idle either at the minehead or at the harbour, the crew have to engage themselves in cleaning the barge, in throwing out bilge water, or in cooking for the crew. One may well agree that being constrained to stay on board the barge all the 24 hours except on weekly off days might be a difficult test of endurance, but that was the practice that had been obtaining for the past several years. But even assuming that the work had became heavier, it had not become so overnight. It had been a progressive increase during the past several years and it cannot be said therefore that the strike had necessarily to be launched for the reason of any sudden alteration in the state of things which gave labour no time to approach the appropriate authorities. It seems to me accordingly that there is no doubt at all that the strike launched without any precedent effort to get the dispute settled through proper negotiations, invoking the aid of the appropriate machinery under the law, must necessarily beheld to be unjustified.

I shall next deal with the general charge that the Managements have displayed a lack of good faith and indulged in unfair labour practice or victimisation in that they have selected only a few of the employees for dismissal, though a very much larger number of employees acted in precisely the same manner as the dismissed persons. It is admitted by the Managements that though they conducted enquiries against all the bargecrew, they dismissed only a few of these persons. The explanation offered by the Managements is that after about the 9th of May, 1969, when the dismissal of these persons was ordered, the total strike commenced with effect from 14th of May. Not only did this development cause them to forbear from taking action against the other members of the bargecrew who had also been chargesheeted and against whom enquiries had been completed, but the machinery of the Government intervened. It is not disputed by the Union that subsequently a conference was held at Delhi under the aegis of the Central Labour Minister and the Labour Minister of Goa and other officials of the Labour Department of the two governments. This being the atmosphere immediately after a few dismissals had been ordered, it is claimed by the Managements that it was not for any *mala fide* reasons that the dismissals were limited to a few of the bargecrew only. The Managements claim to have exercised their right under the contract in taking action against these workers. Now, when it is not denied by the workers that they did participate in the strike and did refuse to carry on their duties according to the practice previously prevailing, can there be any charge of bad faith levelled against the Managements in taking action? The Managements, it is claimed, are entitled to maintain discipline in their organisations. In any case, it is vehemently urged that in proceeding to dismiss these persons who are involved in the present reference, the Managements did not embark upon a process of discriminatory selection. If the Managements chose to deal with the more responsible members of the crew, such as the Captains or Drivers, in the first instance, it cannot be said that any bad faith was displayed thereby. What is even more important, the Managements claim that these persons were not leaders or so much in the vanguard of the Union activities that the charge of victimisation or unfair labour practice can be sustained. In dealing with the individual cases, I shall refer to the status enjoyed by the particular worker *vis-a-vis* the Union activities. But I am now dealing only with the broad argument that is advanced on behalf of the Union that the mere circumstance that only a few among the very many have been dismissed is itself evidence of discriminatory selection and victimisaton. In a case before the Labour Appellate Tribunal of India — *Shalimar Rope Works Ltd.* V. *Udayanath Sethi and others* (1956-2/L.L.J., 123), some of the workmen who participated in an illegal strike were suspended and some were charge sheeted. In the course of conciliation proceedings, the employer agreed not to issue any further chargesheets. The employer filed an application under Section 33 for permission to dismiss all the workmen who were alleged to have participated in the illegal strike. The Industrial Trbunal refused the permission on the ground that the company did not consider the participation of these workmen against whom no chargesheets were served serious enough to warrant dismissal. An appeal was taken against this decision and the Labour Appellate Tribunal observed that the mere fact that the company took the obviously salutory step to avoid further complications in agreeing to desist taking proceedings against those workmen against whom chargesheets had been issued already could not lead to the conclusion «that the company did not consider the case of some workmen serious enough to take action against them, and then to say that the case of these respondents also should have been considered similarly is really to ignore the true state of facts. The reasonable conclusion is that but for the effors of the Conciliation Officer, chargesheets would have been issued to the other workmen also and that such a step was refrained from in order to help conciliation and not because their taking part in the illegal strike was not serious». In another case also before the Labour Appellate Tribunal — *New Union Mills Ltd.* V. *Rashtriya Mill Mazdoor Sangh and others* (1954-2 L.L.J., 439), it was held that the mere fact that the Management condoned the act of a few of the workmen while selecting other delinquent workmen for the purpose of awarding punishment would not justify refusal of permission by the Industrial Tribunal when the *bona fides* of the Management in selecting those persons was not challenged. It would therefore appear from these decisions that the enquiry should be directed to discover whether in selecting these persons for disciplinary action, the Managements acted *bona fide.*

Certain other decisions carry the matter further. The Supreme Court held in *Hamdard Bawakhana Wakf* V. *Its Workmen* (1962-2 L. L. J., 772) that once it is held that the concerned workman was guilty of misconduct and it is found that the said conclusion is not perverse, the dismissal of the offending workman must be upheld even though the said workman may be an active worker in the Union not liked by the appellant. This decision clearly lays down that the mere circumstance that the dismissed worker was an active member of the Union cannot lead to the inference that his dismissal was tainted by victimisation. If, upon a proper enquiry, the conclusion was reached that the worker was guilty of the misconduct alleged, and that conclusion is not perverse, the punishment would follow in the natural course, and will not be affected by the position occupied by the worker *vis-avis* the Union activities. In another decision of the Supreme Court — *Titagarh Paper Mills Company* V. *Ram Naresh Kumar* (1961-1 L. L. J., 511), the case of a workman who also happened to be the Vice-President of the Union, who was dismissed from service, was considered. This order of dismissal was interfered with by the Industrial Tribunal, one of the grounds for such interference being that the concerned workamn, who was the Vice-President of the Union, was considered to be an eyesore by the Management. Their Lordships observe that the grounds laid down in the *Indian Iron and Steel Company case* (1958-1 L. L. J., 260) upon which the Tribunal could interfere did not obtain in the present case. They said:

> «Dereliction of duty was clearly established in this case. The Management had the right of dismissal under the relevant standing orders. A proper enquiry was held and the explanation of the workman was found to be childish ... Nor can this be said to be a case of victimisation, for the dereliction of duty was clearly established. All that the Tribunal has said is that there was room for suspicion that the Management wanted somehow or other to get rid of the man. But considering the nature of the dereliction of duty in this case, it cannot possibly be said that the Management had any hand in the failure of the workman to perform his duty properly ... The Tribunal itself had to concede that the reason for the dismissal was sound, but it said that it was designed. This is something which we cannot understand ...»

It would accordingly be seen from the above decisions that where the order of punishment has been made after pursuing a proper enquiry and the enquiry had been conducted *bona*

fide and the conclusion reached by the Management is not perverse for any reason whatsoever, the normal right of the Management to impose a punishment within the scope of either the standing orders or the scope of the rights which a master enjoys in relation to his servant in virtue of either a written contract of service or such rights as would flow from common law, cannot be defeated merely for the reason that the particular employee sought to be punished was a worker of the trade union. What has to be examined is whether the action of the Management was *bona fide*.

Apart from suggestions made in a few cases that this or that dismissed employee was an active worker, in the generality of cases, the argument advanced is merely that the very fact that only a few were dismissed out of many indicates discriminatory selection. It has already been pointed out that the onset of the total strike, followed by a conference at Delhi called for by high officials, prevented the Managements from dealing likewise with the other workmen who were similarly charge sheeted. Over and above all this, there is the admitted position that these workmen did participate in the strike and refuse to ply the barges in accordance with the previously prevailing practice. In fact, they admitted the charge to that extent, at any rate though they might have denied that the strike was illegal. It should follow that while this general argument that there was a discriminatory selection must be rejected, each case will have to be examined on its own special facts from this perspective.

In the light of the foregoing discussion, I shall proceed to deal with the cases of dismissals individually.

It would be convenient to examine the cases of the dismissals in groups. In the case of some companies, a single set of charges relevant to the partial stoppage of work from 16-2-1969 onwards was framed; in others, there were two sets of charges and two enquiries; and in the case of the rest, the charges were slightly different.

The dismissals ordered by the following companies

Damodar,
Dempo,
Shantilal,
Kantilal,
Timblo, and
Pandurang Timblo

proceeded upon the charges of

1. Wilful refusal to carry out lawful orders of superiors;

2. Participation in an illegal strike; and

3. Commission of an act subversive to discipline. It may be stated broadly that charges 1 and 3 were only facets of Charge 2, there being no evidence that any particular direction given by the superiors was disobeyed or that there was any act other than the strike itself which was the basis of Charge 3.

One of the arguments advanced with regard to the charges and the subsequent proceedings is that their pattern is identical even in the case of different companies; that it was elicited that the Goa Mineral Ore Exporters Association of which all the companies are members held meetings at which it was decided what action should be taken against the striking bargecrew and that even the findings, though recorded by different Enquiry Officers, are identical in form and content; it is therefore said that an extraneous agency, namely, the Association, dictated the nature and scope of the enquiry and that the Enquiry Officers did not apply their mind in coming to the decision on the evidence. That the matter of the strike was discussed in the Association by the member companies or that they decided to take disciplinary action against the striking bargecrew does not affect the validity of the action. The question of working hours raised by the bargecrew affected all the employers alike and no one employer could take a stand different from the others and thereby affect the pattern of working in the industry. When all were faced by the strike, there is nothing wrong in their consulting with each other with regard to the action taken. But undoubtedly if it is shown that the Enquiry Officers were constrained by external authority to record a particular set of findings irrespective of the evidence before them, their conclusions would stand vitiated. In that circumstances, the Arbitrator has jurisdiction to examine the evidence and reach a proper conclusion.

Damodar Mangalji: This company has nine barges. It employed 83 workmen. In common with the employees of other companies, the workmen of this company, acting under the instructions of the Goa Dock Labour Union, refused to ply the barges between 6 p. m. and 7 a. m. on the following morning. The company issued show cause notices to all the bargecrew and followed them up with chargesheets and conducted enquiries thereinto.

In the case of the three workmen involved in this present arbitration, show-cause notices were issued to them on the 25th February, 1969, calling upon them to explain the partial stoppage of work. Their explanations were submitted on the 27th February; wherein they contended that the settlement dated 30th September, 1964, was not binding on them. The company thereafter issued chargesheets. The workmen were also informed of the dates upon which the enquiry would be held. The case of the company is that the workmen attended the enquiry, though they declined to cross-examine the witnesses examined on behalf of the company at these enquiries. They did not also produce any documents or witnesses. One of the workmen, A. K. Suleman, signed the enquiry proceedings. The remaining two refused to sign. A note to that effect was made by the Enquiry Officer on the records.

The Enquiry Officer submitted his findings in which he found the workmen guilty of the charges. The Management accepted these findings and passed orders of dismissal. The contention of the company is that these workmen were dismissed after a just and proper enquiry at which the workmen were present and were given a reasonable opportunity to defend themselves.

The written-statement filed by the Goa Dock Labour Union on behalf of the workmen attacks the enquiry as having been conducted more in the nature of an empty formality than one which gave any substantial opportunity to the workmen to defend themselves. It also charges the enquiry officer with having failed to apply his mind to the facts. It further alleges that he relied upon information which was not disclosed during the enquiry.

Turning to the evidence in this case, the Director of the company as M.W.1 stated that the normal pattern of work of the bargecrew was to work round the clock, that is to say, they have to stay on the barge all the 24 hours of the day. It is stated that in accordance with the 1964 agreement, letters of appointment were issued to the bargecrew, which specified that the pattern of work was to be round the clock. It was he who directed the issue of the show-cause notices. Though he denied the suggestion that the Goa Dock Labour Union gave any notice terminating the settlement of the 30th September, 1964, he only stated that he could not recall if any such notice was received. In addition to serving a copy of the chargesheet upon the workmen, the Labour Officer of the company was directed to paste a copy of the chargesheet on the barge on which the crew were employed. To the suggestion that these three dismissed workmen were persons of some importance in connection with the activities of the Goa Dock Labour Union, he admitted that these persons might have come with Mr. Mohan Nair, the Secretary of the Union, to meet him when negotiations were going on. But equally other workmen could also have come for such a purpose.

Mr. Chattopadhyaya, the Labour Officer of the company, was the person who conducted the enquiries into these cases. He stated that these three persons were present and in their presence he examined the officer in charge of the river fleet. During cross-examination, he admitted that the evidence of the witness at the enquiry was not recorded afresh at each enquiry. Mr. Vaz, the officer in charge of the river fleet, told him that the evidence would be identical in all the cases and gave him a written statement of that evidence. The Enquiry Officer had this statement typed on each of the sheets of the enquiry even before the enquiry. In a like manner, he had typed out a set of questions which he wanted to ask of the chargesheeted persons. He denied the suggestion that no record was prepared at the time of the enquiry or that he asked the chargesheeted person to sign on a blank sheet of paper. He admitted that the records of the findings in these cases are identical, but explained it by saying that the facts were all identical. His attention was drawn to the fact that in his findings a statement finds place that the workman repudiated the settlement of the 30th September, 1964, while in the statement of the worker as recorded by him, no such claim was made. He could not explain this discrepancy. His conclusion was that mere participation in an illegal strike did not warrant dismissal, but that that had to be considered in the light of the findings on the other charges.

Mr. Vaz, the officer in charge of the fiver fleet during the relevant period, stated that at about 10 p.m. on the 16th February, 1969, he gave a direction to A. K. Suleman, the Master of the barge KAMADENU to go alongside a ship to collect some cargo and that Suleman refused to obey the orders, saying that from that day onwards there would be no work from 6 p.m. in the night to 7 a.m. the following morning. He claims that thereafter, he asked Sheik Mohamad Shab to go instead of Suleman and that he too refused. It has to be noted that the specific direction and the refusal by these workmen was not incorporated in the chargesheets issued to them; it may further be noted that the evidence of Mr. Vaz during the enquiry is equally silent in this regard. Coming to the enquiry, he admitted that he had given his statement to the Enquiry Officer two or three days before the enquiry itself and that statement has been typed out and kept ready. At the enquiry, he read over the typed copy and signed it. It was the Enquiry Officer who read out that statement to the workman and asked the workman to cross-examine the witness, Mr. Vaz. He spoke to the fact that Suleman signed the record, while the other two refused. During cross-examination, he conceded that he had failed to mention the specific instance of refusal referred to above, but could give no explanation for the omission. It does not also appear from his evidence that he made any report of the disobedience of the crew to the Management.

Each of the three workmen gave evidence. Suleman stated that during the evening of February 16, his barge was anchored at the jetty and no orders were issued to him by any persons to take his barge to collect the cargo. Each of them asserted that when the enquiry relevant to him was conducted, only he was present along with the Enquiry Officer, and that no others were present, particularly Mr. Vaz, who is claimed to have given evidence at the enquiry. Suleman swore that the Enquiry Officer had a couple of sheets of paper with him from which he read out and to such questions as he asked he replied. The Enquiry Officer did not record anything. It was a blank paper which he, Suleman, signed, because the Enquiry Officer promised to give him a copy. He admitted that the explanation to the show-cause notice was obtained from the Union office, but later claimed that he prepared it himself.

Mahamod Shab gave evidence on the same lines in so far as the enquiry is concerned. He was however careful enough not to sign the blank sheet of paper which the Enquiry Officer wanted him to sign. He denied that any typewritten sheets of paper which the Enquiry Officer had with him were shown to him. He claimed that the only question which the Enquiry Officer put to him was why they were not working for 24 hours.

The evidence of the third workman was on identical lines. He admitted during cross-examination that the Union gave him the explanation to the show-cause notice and the Union also advised him to attend the enquiry. He specifically denied that there was any order from the Management after the 16th February asking him to undertake work of any description between 6 P.M. and 7 A.M.

Each of these witnesses made the further claim that they were persons with whom the Management used to deal on behalf of the workmen. Suleman stated that on occasions, he alone or with the other two used to go and meet the Management, and that both before and after the 16th Ferbuary, they had talks with the Director about the hours of work. He admitted that the relationship between the workmen and the Management was cordial. He could not give any particulars of the occasions when prior to February, 1969, he met the Management, or even the purpose for which he met the Management. Mohamad Shab also asserted that he and two others «are the leaders in so far as the work of Union in our company was concerned», and that in addition, they used to meet the Management, the Officer-in-charge of the fleet or even the Director. He further stated that when a few days prior to the 16th February, the Managing Director asked them to work as usual, promising to pay some bakshish, he conveyed the promise of the Director to the bargecrew, but as the terms of the promise were not clear, all the workmen declined the offer.

Narvekar, the third discharged workman, asserted that he was dismissed because the Director did not have a good opinion of him. Though he stated that about a week prior to the 16th February, the Director called the three of them and advised them to work for 24 hours, he did not specifically claim that he was one of the leaders who met the Management on behalf of the workmen.

The findings submitted by the Enquiry Officer, on which the Management proceeded to dismiss the workmen, purport to proceed on material which is nowhere to be found in the record of the evidence. The Enquiry Officer states in his findings, «In spite of oral instructions to the said workman to continue his work as per usual practice followed so far, and persisted in working as per the above timings». The only witness examined by the Enquiry Officer was Mr. Vaz, whose evidence was «It is observed that beginning from the 16th instant, the said workmen have unilaterally resorted to work between 7 A.M. and 6 P.M. contrary to the prevailing working hours and still continue to do so and refused to work in the night period». Mr. Vaz spoke of no oral instructions given to any of the workmen which they refused to obey. The Enquiry Officer's statement in this regard travels beyond the recorded evidence.

It was Mr. Vaz who in his evidence before the Enquiry Officer stated that the curtailment of working hours was a breach of the settlement dated 30th September, 1964. No question was put to the workman about the settlement. Yet the Enquiry Officer in his findings records, «When asked, the workman explained... that the settlement dated 30th September, 1964, under which the bargecrew have reaffirmed to work as per old practice, is inoperative since it expired on 31st December, 1967...» No such statement is found in the recorded answers given by the workman, but that was the defence of the workman in his explanation.

The Enquiry Officer further notes that it was brought to his notice by the Management that proceedings in another industrial dispute were pending before the Tribunal, by reason of which he had the act of the workmen to be a strike. The record however does not show *how* this fact was brought to the notice of the Enquiry Officer. Mr. Vaz, the only witness for the Management, did not speak of it. Nor was any record filed before the Enquiry Officer by the Management to prove the pendency of any proceedings before the Tribunal.

I see no reason to doubt that the enquiry was conducted properly, though the findings suffer from the defect that material upon which reliance was placed was not properly brought on the record, though the existence of that material might have been known to the workman. Nor can I see how any real prejudice was caused, for it is the admitted position that the workmen participated in the strike. It nevertheless does appear from the evidence of the Director of the company that these three workmen used to come along with Mr. Mohan Nair for discussion; whether they were prominent in the activities of the Union or not, they were regarded as spokesmen of the workers, perhaps in their capacity as Masters of the barges. Though I do not agree with the argument that they were discriminatorily selected for dismissal, there is no doubt that a suspicion of that nature does arise from the circumstances of the case.

The opinion of the Enquiry Officer was definitely that the participation in an illegal strike does not warrant dismissal, but that it aggravated the other proved charges, namely, disobedience of orders and commission of an act subversive of discipline. These two heads of charges are nothing more than a translation of the charge of participation in the strike into other words; there is no evidence that apart from the participation in the strike, the workmen did anything which could be distinctly and separately brought under the other two heads of charges. The real finding is only that the workmen participated in the strike, illegal or merely unjustifiable. I agree with that finding. I shall deal with the question of punishment later.

V. S. Dempo & Co.: Six persons, three Captains and three Drivers, stand dismissed by this company in respect of the partial strike from 16th February, 1969. The company issued show-cause notices on the 25th February. Only two of the workmen submitted explanations, wherein they challenged the binding force of the settlement, which, according to them, expired by the 31st of December, 1967. Thereafter, the company issued chargesheets to each of these workmen. The workmen are stated to have refused to accept the chargesheets attempted to be served upon them in the presence of witnesses. Accordingly, copies of the chargesheet were displayed on the notice board of the office as well as on the barges themselves. An enquiry was in due course conducted on the dates fixed. The enquiry was necessarily *ex parte*, as the workmen did not choose to be present. The Enquiry Officer examined one witness on behalf of the company, who spoke to the partial stoppage of work, which was said to be contrary to the prevailing practice and to the terms of the settlement between the bargeowners and

their crew. The Management considered the findings submitted by the Enquiry Officer and passed orders of dismissal. The orders as well as the money orders sent to these workmen were returned undelivered. The company besides displaying the orders of dismissal on the notice board, caused publication to be made in the *Navhind Times*. It is the contention of the company that an enquiry was properly held and the dismissal order cannot be challenged for any reasons whatsoever.

In the written-statement of the Union, the usual general ground has been taken, namely, that these workmen have been singled out for disciplinary action, because they were acting as trade union leaders. It is alleged that the witnesses were not examined or allowed to be cross-examined and no real enquiry was conducted by the Enquiry Officer. But the claim of the company that these workmen absented themselves from the enquiry and that the orders of dismissal were finally published in the newspaper, which fact should certainly have been within the knowledge of the workmen and of the Union, has not been met in the written-statement. Of course, there is no denial of the charge against these workmen that they did resort to restricted hours of work. The further allegations made in his written-statement are that the findings of the Enquiry Officer are perverse, and that he acted upon information which was not disclosed to the employees.

At the *ex parte* enquiries, conducted by the Enquiry Officer, Mr. N. K. Murthi, Mr. Harekar, Supervisor Inspector of the River Fleet Section of the company, was examined and his statement in each of the cases was shortly this:

> «The workman struck work between 6 p. m. and 7 a. m. from 16-2-1969 without any grievance or any demands, contrary to the prevailing practice of working 24 hours. In spite of my instructions, the workman refused to ply the barge, stating that he would work only for 11 hours from 7 a. m. to 6 p. m. ...»

Upon these findings, as well as the accepted position that these workmen did refuse to work between 6 P. M. in the evening and 7 A. M. in the morning, the Enquiry Officer recorded his findings that the refusal of the workman was contrary to the settlement between the parties and that the charge of participation in an illegal strike was established. He also accepted the evidence of the Management witness that the workman had refused to carry out the orders of the superior when the latter directed him to ply the barge between 6 P. M. and 7 A. M. Besides establishing the refusal to obey the orders of the superiors, that same fact also established, in the opinon of the Enquiry Officer, that the workman was guilty of the commission of an act subversive of discipline. As stated, the Management accepted these findings. But, the order of dismissal confined its purported action only to the two charges, namely, wilful refusal to carry out the lawful order of superiors and commission of an act subversive of discipline.

In the proceedings before me, for the reason that the enquiry before the Enquiry Officer was *ex parte*, evidence has been let in to establish the charges and the matter has been placed before me for disposal on merits as well. I shall therefore refer to the evidence.

The first witness for the Management is Vasudev Dempo, the Director of the company. He spoke to the settlement dated 5-9-1964 entered into between the company and the Goa Dock Labour Union. He stated that there was a further settlement on 25-10-1966, which covered a dispute with regard to interim relief and dearness allowance which the Central Wage Board recommended in respect of the port and dock workers. Despite the contention of this company that these recommendations were not applicable to the bargecrew, who are not port or dock workers, however, the company agreed to grant certain allowances. It was also agreed herein that a reference should be made to the Central Wage Board for clarification whether the bargecrew of the company were entitled to the recommendations referred to. Accordingly, there was such a reference made by the Government of Goa to the Industrial Tribunal. In November, 1967, again there was a strike. Again another settlement was reached on 15-11-1967. As a result of this, the bargeowners agreed to extend to the bargecrew the benefit of certain interim recommendations of the Central Wage Board and other reliefs pending the award of the Industrial Tribunal in the reference that had been made to it. It may be mentioned that under the settlement of 1964, it was agreed between the parties that the system of working should continue as in the past. It may also be further mentioned that the bargeowners implemented the conditions of the settlement, such as the issue of appointment letters, re-fixation of the pay of the bargecrew, the grant of bonus, etc. That was the position on the eve of the strike that was started in February, 1969.

According to the Director, the system of working was that the bargecrew had to be on the barge all the 24 hours. That is not denied by the Union. Enquiries were conducted in respect of about 200 of the bargecrew employed by this company and all of these findings were placed before the Director. As in the case of the other companies, action against the bargecrew other than these six persons was prevented by reason of the settlement that was reached at Delhi. In the cross-examination of this witness, it was elicited, that some time in 1964, an arbitration by the Chief Minister of Goa was sought but that did not fructify. In September, 1964, the bargecrew resorted to 8 hours work. It was following upon that that the settlement of 5th September, 1964, was reached. He admitted another settlement which appears to have been reached also on the 5th September, 1964. It is marked UJ-1, which stipulated that an additional 2½ per cent of the wages as stipulated in the agreement of the 5th September should be given. Apart from this, there was no modification of the other terms of that settlement, principally with regard to the system of work. He stated that though certain additional payments were made in 1966 and 1967, presumably on the basis of the Central Wage Board's recommendations, they did not in any way affect the continuance in force of the 1964 settlement. He admitted however that the 1964 settlement could not be regarded as unalterable for all time. He stated that no notice was received from the Goa Dock Labour Union, demanding any restriction of the working hours, nor was there any notice of termination of the September, 1964, agreement.

Coming to the events immediately prior to the commencement of the partial strike, he stated that about 11th February, 1969, he directed the office to summon about a dozen Captains and Drivers. A ship of the company was waiting to be loaded and in order to avoid any delay in the loading programme, he met these Captains and Drivers to see to that the work was not delayed. He said that Harischandra Parap, one of the Captains dismissed, was present at that time. He asserted that at that time there was no indication that a partial strike would be started shortly. He admitted also that the bargeowners in general as members of the Goa Mineral Ore Exporters Association considered the situation. Before anything effective could be done, the bargecrew further reduced their hours of work and this rendered any amicable solution difficult. The Association left it to each members, that is, bargeowners, to take such action as each member thought fit. The suggestion of the Union made in the cross-examination of this witness was that all the bargeowners jointly decided upon the dismissal whatever may be the position, and that suggestion was denied. According to him, the bargecrew used to meet him in regard to any complaints and Harischandra Parab so used to meet him. Besides other dismissed persons here, several other bargecrew used to meet him for such a purpose. He specifically denied that action was taken against these persons because they were leaders. To his knowledge, they were not leaders. He also admitted that action against the remaining bargecrew was not taken because of the prospect of a total strike.

The Enquiry Officer stated that at the enquiries conducted by him, the workmen did not appear and he examined the Management's representative, Mr. Harekar. He admitted that the two charges of wilful refusal to carry out the order and commission of an act subversive of discipline were really part and parcel of the charge of participating in the illegal strike. In reply to the suggestion that the barges upon which Umakanth Xette and Dinanath Fatto were employed were under repairs at the time of the alleged strike, he stated that he did not have any such information at the time of the enquiry. In so far as the evidence of this witness is concerned, there is nothing to show that the enquiry was not conducted properly. In the case of *ex parte* enquiries, the Enquiry Officer can do nothing more than examine the representative of the Management.

Mr. Harekar, Supervisor Inspector, who is in charge of the movements of the barges, spoke to the attempted service of the chargesheet upon some of the persons chargesheeted. He stated that at 6 p. m. on 16-2-1969, he saw the barge JAYA MAYA of which Harischandra Parab was the Captain, and the other barges on the shore. When he questioned these persons, they told him that they would not work after 6 p. m. He claimed that he contacted Harischandra Parab and told

him to proceed to the ship, which direction he refused. He claims that he then asked Dinanath Fatto, the Driver, if he would take the barge to the ship if he provided him with another Captain, but he too refused. He then went to the repair shop where he found Umakanth Xette, whom he asked to go the harbour and take JAYA MAYA to the ship. Umakanth Xette also replied that he could not go before 7. A. M. the next morning. Within the week following that date, he claims to have contacted Yeshwant Fatto, J. B. D'Souza and Ramakanth Xette, who also refused to take the barge after 6 P. M. The evidence of this witness is apparently intended to establish that specific directions were issued to these six dismissed persons which they declined to carry out. In cross-examination, he claims that till about the 5th March, he was frequently asking the bargecrew to continue to work after 6. P. M. He admitted further that in his statement before the Enquiry Officer, he did not give out these facts.

He admitted that sometime after the 16th, he was instructed by the Chairman of the company to take some of the bargecrew to his residence. Harischandra Parab, Yeshwant Fatto and Dinanath Fatto so met the Chairman. During the 1967 strike also, he had taken Harischandra Parab, Yeshwant Fatto and J. B. D'Souza and some other for a like. purpose. When the Chairman promised to do what he could to meet their difficulties and asked them to work, these persons claimed that they could not do so as other companies were involved. He was questioned about the refusal to accept the charge sheets. He admitted that though the company was aware that the Goa Dock Labour Union was behind the strike, the copies of the charge sheets were not sent to the Union when the bargeerew refused to accept service. He denied the suggestion that the barges of Ramakanth Xette and Dinanath Fatto were under repair at the Goa Shipyard on 16-2-1969.

The evidence of Mr. Rodrigues, the Supervisor of the company, was only with reference to the chargesheets to be served upon the crew of the barge MALA, of which D'Souza was the driver. He claimed that when D'Souza refused to accept the chargesheet, he made an endorsement to that effect and affixed a copy to the wheel house of the barge and sent other copies to the office. Detailed reference to his evidence is hardly necessary, though in cross-examination it was sought to be elicited that he made no attempt to serve these chargesheets.

Only one witness was examined on behalf of the workmen and he is Harischandra Parab, who was the Captain of JAYA MAYA. He spoke to the stoppage of the work between 6 P. M. and 7 A. M. and to his receipt of the show cause notice. Acting on the advice of Mr. Mohan Nair, he gave a reply. He denied having received any chargesheet or any other communication from the company. He denied that he ever saw any chargesheet pasted on the wheel house of the barge. To his knowledge, there was no enquiry. He claimed that on the 8th of May, when he came to the harbour with a load of ore, he was asked to unload it and wait. He did so. But till the 13th, though he was every day asking for instructions, none was issued to him. According to him, at about 11 A. M. on the 13th, he was told that he was discharged. He denied that Harekar ever came to him to serve a chargesheet or that he refused to accept it. He claimed in cross-examination that he was one of the person who met the Chairman or a Director in case of any trouble or difficulty. He admitted that originally the bargecrew were members of the Marmagoa Port Union and so long as they were members of that union, it was that union which contacted the Management and not any individual members of the bargecrew. Later, he joined the Goa Dock Labour Union. He admitted that he did not take any active part in the union activities, but he became the Vice-President of the Union. He admitted also that no one took any leading part in enrolling members for this Union. His further cross-examination in this regard virtually established that the Union was under the sole guidance of Mr. Mohan Nair, who presumably engaged himself in every activity of the Union, purportedly on behalf of all of these members. He swore that in January, the decision to go on the partial strike was taken, and it was decided that the bargecrew should work only for 11 hours in a day with overtime pay for work outside that period and that this demand was communicated to all the companies by the Secretary. He admitted that he does not know in what manner it was communicated. He admitted that between the date of this meeting in January and the date of the actual strike, there was no meeting between any members of the Union and the Managements, which should have been the case if any formal demand had been made. He further admitted that the show-cause notices were received by him and other members of the crew, to which he submitted his reply furnished to him by Mr. Mohan Nair. He claimed to be unaware if any of the other members of the crew gave any replies to the show-cause notices, or if any of these was served with a chargesheet, a somewhat surprising position, seeing that is the Captain of the barge and could not have been unaware of these happenings.

On a consideration of the evidence, I see no reason to doubt that the chargesheet was attempted to be served upon these persons and that they refused to receive the chargesheet. In those circumstances, the Management had no alternative but to proceed with the enquiries *ex-pare*. The position is in fact admitted that these persons did participate in the partial strike and did refuse to work beyond 6 p. m. Even if we disregard the proceedings of the enquiry and the findings, the evidence certainly establishes that the charge of taking part in the partial strike against these persons is fully made out. I am not satisfied that the charges of refusal to carry out orders or commission of an act subversive of discipline are proved independently of the charge of taking part in the strike. Nor is there evidence of discriminatory selection of these persons for punitive action.

Shantilal Kushaldas & Bros. Pvt. Ltd.: This company dismissed five Captains on the same set of charges. Prior to the issue of the chargesheets, show-cause notices, dated 26th February, 1969, were issued, to which no explanations were submitted. That show-cause notice specified that from the 16th February, onwards, the workmen had unilaterally resorted to work between 7 a. m. and 6 p. m. only. The chargesheets proceeded on the basis that the workmen had further restricted their work to between 10 a. m. and 6 p. m. Though no replies were submitted, the workmen are said to have been present at the time of their respective enquiries, which were conducted by Mr. Simon Viegas and at which Mr. Louis Fernandez, the Barge Ordering Clerk, was examined on behalf of the Management to speak to the stoppage of work. The record of the enquiry shows that the workmen were afforded an opportunity to examine the witness, but they declined to do so. Thereafter, the Enquiry Officer questioned the workmen, principally with regard to the agreement of September, 1964, to the prevailing pattern of work that obtained prior to the strike and to the fact that the workmen did not give any notice of the strike and could not say whether the Union had given any such notice. The enquiry in the cases of all the workmen followed the same pattern as set out above. The Enquiry Officer thereafter gave his findings. He took the view that the agreement of September, 1964, had not been terminated and was still binding and that because of the pendency of certain other proceedings before the Industrial Tribunal, the stoppage of work amounted to a strike. He held the strike to be illegal. He also held that the charge of wilful refusal to carry out the orders of superiors and thereby committing acts subversive to discipline was satisfactorily established. Finally, he stated that though mere participation in an illegal strike did not warrant dismissal, such participation had to be considered an aggravating circumstance against the workmen and that therefore taken together with the other two charges referred to above, the gravity of the offence stood enhanced and severe punishment was warranted. Following upon this, the Management, principally holding that the wilful refusal to carry out the lawful orders and commission of an act subversive to discipline were conclusively proved, directed the dismissal of the workmen. The dismissal orders which were sent by registered post, were returned undelivered; but according to the Labour Officer of the company, who was examined before me, copies of these orders were affixed both on the cabin of the barge concerned and the notice board of the office.

Mr. Simon Viegas, who conduoted the enquiry, gave evidence before me and he spoke to the manner of the conduct of the enquiry. It was elicited from him that he works as the Head Clerk in the Gosalia Shipping Co. which company functions as the agent for Shantilal Kushaldas & Bros. According to him, the barge ordering clerk gives orders to the Captains of the barges. He also stated that the loading advice given to the Captain is maintained in the form of a book of printed forms, a copy of the particular order being given to the Captain, the duplicate being retained in the book. The document representing this loading advice was not produced before me, nor did this barge ordering clerk state before the Enquiry Officer that he gave any particular order to the Captain which order the Captain refused to carry out. He admitted that after concluding the enquiry, he took the assistance of the Assistant Manager of the office of the company, to whom he conveyed the points covered

at the enquiry, and it was this Assistant Manager who gave him a draft of the findings, which he adopted as his own.

It would be seen accordingly that the evidence purports to establish that enquiries were conducted in the presence of the workmen, who were given an opportunity to cross-examine the company's witness and to produce evidence on their side. To that extent I see no reason to disbelieve the statement of the Enquiry Officer. The suggestion that was made to the Enquiry Officer during cross-examination before me that he held no enquiry at all I find myself unable to accept. However vitiated the findings may be, for the reasons that they were not those of the Enquiry Officer himself but were probably inspired by the Assistant Manager of the company, the fact nevertheless was and is established that these workmen did enter upon a partial strike as mentioned in the charge. The findings though they record that only two heads of charges were established, do really imply that the charge of participation in the strike was the only one established. Even if the findings are not accepted as being not those of the Enquiry Officer, the position is that it is admitted before me that these workmen did participate in the strike.

Kantilal Company Pvt. Ltd.: This company dismissed one workman — Marcello Lucio, on the same charges as in the case of the workmen of Shantilal Kushaldas & Bros. In fact, it appears that these two companies are managed by the same Gosalia Shipping Company as their agents. The same Enquiry Officer conducted the enquiry in this case. The evidence and the proceedings are identical and what I have stated earlier with regard to Shantilal Kushaldas & Bros. equally applies to this case.

Pandurang Timblo Industrias: In the case of this company, three Captains, one Sukani and three Drivers were dismissed. According to the show-cause notices, some of these workmen joined in the partial strike on some dates subsequent to the 16th of February. But that is not a very material circumstance. The reply was given by these workmen complaining that the employer had no right to expect the workmen to work for more than eight hours a day and that the settlement of September, 1964, was no longer binding on them. This was followed by the issue of the stereotyped set of charges. It is the case of the company that except Anthony Fernandez, Francisco Fernandez and Santana Fernandez, the remaining persons were present at their respective enquiries. In inspite of their presence during the enquiries, those workmen refused to sign the record. In cases where the workmen were not present, the enquiry was *ex parte,* during which the Enquiry Officer questioned the witness produced by the Management. In other cases, he did likewise and asked the workmen if they had any questions to ask of the Management witness. Thereafter, he questioned the workmen themselves. On the basis of this reocrd of enquiry, he submitted his findings.

It is the contention of the Union on behalf of these workmen that no enquiry was conducted into the charges and these seven workmen have been selected for dismissal for the reason that they are active trade union workers. The charge is levelled that no enquiry having been held and no opportunity given to the workmen to explain their stand, the action against these workmen is against the principles of natural justice.

A partner of the firm, Mr. Subash Timblo, gave evidence to the effect that no notice terminating the agreement of September, 1964, was received by the company from the Union. He directed the issue of show-cause notices and followed it up by the issue of chargesheets. Mr. Kamath, the Labour Officer of the company, was appointed to conduct the enquiries. As in the cases of the other companies, he had dealt with the cases of these seven persons by the time settlement was reached in Delhi, after which no action was taken against the remaining bargecrew, who had also been chargesheeted.

The Labour Officer of the firm, Mr. Kamath, conducted the enquiries. With particular reference to an enquiry conducted on the 5th of May, the witness was asked whether that was not a public holiday on account of the funeral of the late President Zakir Hussain. Though he conceded that on such a public holiday the office of the company would be closed, he nevertheless maintained that he conducted the enquiries on that day as well. Some discrepancies in the dates mentioned in the show-cause notices were brought to the attention of this witness. This discrepancies are not of any material importance. In cross-examination, he conceded that Shri Albano DSouza, who was in charge of the movements of the barges, did not stage before him that he gave any order to any of these persons on any particular day which they refused to obey. He denied the suggestion that the enquiry notes and findings were all prepared subsequently.

Albano de Souza, who was the Fleet-in-Charge of this company, claimed that he gave evidence before the Enquiry Officer, Kamath, in about 55 enquiries. At each of these enquiries, Mr. Kamath recorded the questions and answers. The evidence of this witness as given before the Enquiry Officer will have to be referred to in some detail, for the charge of wilful refusal to carry out the lawful orders of the superiors is presumably rested upon some directions purported to have been issued by Albano de Souza. Taking his evidence in the enquiry against Gurudas Sawant, Albano de Souza stated that coming to know on the 17th of February that the bargecrew had refused to ply the barge after 6 p. m., he asked Gurudas Sawant about it and that he, Gurudas Sawant, did not choose to explain the matter to him, and further told him that as Captain of the barge, he had ordered the crew not to work after 6 p. m. Albano de Souza stated further that he told Gurudas Sawant that it was against the agreement and asked him whether he was prepared to work as per the established practice at least from then. Then Gurudas Sawant declined and also claimed that he did not recognise the agreement as binding. It will be seen from the above that Albano de Souza only claimed to have spoken to Gurudas Sawant asking him why the work was stopped after 6 p. m. It was not his case that he as the person in charge of directing movements of the barges gave any particular instructions to Gurudas Sawant as the Captain of the barge to take the barge to this place or that, or to perform this duty or that, which direction the Captain refused to obey. What all the evidence of Albano de Souza establishes is that on becoming aware that all the bargecrews had taken to the partial strike, he questioned Gurudas Sawant about it and nothing more. It is difficult to see how this evidence can amount to establishing the first head of charge, that is, wilful refusal to carry out the lawful orders of the superiors, as independent of the main charge of participation in the strike.

It is admitted by the Management that there is no record in the shape of an attendance register to show that Albano de Souza was present at the office on 5-5-1969. The other side accordingly suggests that the records of the enquiry should therefore have been fabricated in most of these cases wherein the enquiry is said to have taken place on 5-5-1969. This suggestion is too far fetched to be accepted.

In his findings, the Enquiry Officer found these workmen guilty of wilful disobedience of a lawful order of a superior and also commission of an act subversive of discipline. What particular act amounted to disobedience and what act was subversive of discipline was neither brought out in the evidence before the Enquiry Officer nor explained in the record of findings. These conclusions of the Enquiry Officer, which cannot therefore be said to proceed upon the evidence before him, must be regarded as perverse.

As has happened in the earlier cases, what was admitted and proved was only the participation in the strike. I hold that alone to be proved on the facts before me.

Timblo Private Limited: Four workmen, Chandra B. Aloncar, Avelino Fernandez, both Masters of barges, and Mangesh Morzo and Dattaram Porobo, both Drivers, stand dismissed by this company. This company owns 10 barges and employed 84 workmen, including those mentioned above. It is the case of the company that after the issue of the show-cause notices and the receipt of explanations from the workmen, chargesheets were issued and enquiries were conducted. At these enquires, the workmen concerned were present. Certain witnesses were examined on behalf of the company, whom the chargesheeted workmen declined to cross-examine nor did they produce any witnesses. Finally, the Enquiry Officer submitted his findings in which he found the workmen guilty of the charges. Accepting these findings, the Management dismissed the workmen. The orders of dismissal were communicated by registered post, which however were returned undelivered.

According to the Management, the workmen were present at the time of the enquiries at which Karl Britkoff, the Fleet-in-Charge of the company, and one Mr. J. G. Desai, were examined. It is the common case of the Management that the chargesheeted workmen declined to cross-examine the withnesses and also refused to sign the record of the enquiry.

Mr. A. S. Rodrigues, the Office Assistant at the Head Office of the company, held the enquiries into these cases.

In cross-examination, he admitted that he does not hold any administrative or supervisory post and that he was orally instructed by the Director of the company to conduct the enquiries. The workmen were also examined by him. He admitted that he conducted about 72 enquiries in all and that when it came to recording his findings, he prepared a rough draft of the points and gave that draft to the Manager who made a fair draft of the findings.

Mr. J. G. Desai, who is the person described as the bargecrew in charge, stated that on 16-2-1969, he received information that some of the barges of the company were returning to the harbour after unloading ore only partially. He proceeded to the spot and found that among several barges that were returning, there was one of this company. He could not say which barge it was. He enquired of that Captain (again he could not say who he was) why he was returning from the ship. That person told him that he could not work beyond 6 P. M. There were three other barges of this company at the breakwater and this witness claims to have questioned the Captain of each of them, who gave the same reply. Among these persons were, according to him, Chandra Aloncar and Avelino Fernandez. During cross-examination, this witness admitted that he gave his statement not at the enquiry but before the actual enquiry and that the enquiry officer told a clerk to take down his statement, which according to him was in the form of a narrative and not in the form of questions and answers. This is contrary to the record. He admitted that he did not make such statement at every enquiry.

Turning to the record of enquiry, it is seen that there is no statement of this witness that on the 16th of February, 1969, he went to the breakwater and questioned the Captains of some of the barges of this company. There is no suggestion in the entire evidence that any specific directions were issued to the workmen which they disobeyed. Presumably, it is only the failure to work according to the prevailing pattern of working, that is to say, round the clock, and to the refusal to work beyond 6 p. m. at night, that was construed by the Management as a wilful refusal to carry out the lawful orders and as commission of an act subversive to discipline, which are the first and third heads of the charges.

Upon this material, the Enquiry Officer proceeded to record his findings. He has stated, «In spite of repeated requests from the Management to work as the established practice, the said worker persisted ...» I have already pointed out that there was no evidence that any specific instructions were given to the workmen in this regard. The Enquiry Officer finally concluded: «I am convinced that the worker concerned has refused to carry out the lawful orders of the superiors, that is, not plying the barge round the clock as per decisions and as such committed the act subversive of discipline». It is clear that the Enquiry Officer rightly held that the first and third charges were really part and parcel of the second charge of participation in the strike.

In the order of dismissal issued by the company, for some reasons that are not clear, the second charge of participation in an illegal strike was left out.

One significant fact that emerges from the evidence of the Enquiry Officer given before me is that the findings appear to have been reached not by the Enquiry Officer but by the Manager of the company, one Subhash Chandra. The claim of this Enquiry Officer that he prepared a rough draft of the points and gave it to the Manager who made a fair draft is not supported by the production of the rough draft or by the examination of the Manager. Can it then be said that the conclusions were really reached by the Enquiry Officer and not by anyone else?

Despite these defects, I see no reason to hold that the enquiry was not conducted fairly. There is no contention in the written-statement of the Union that the workmen did not know what charges they had to face; or that the witnesses were not examined in their presence or that they were not permitted to cross-examine the witnesses. The broad allegation that the enquiries were not conducted according to the principles of natural justice is very vague. It could equally well imply that the Enquiry Officer was prejudiced, being an employee of the Management. Such a charge cannot be sustained unless it is shown that the Enquiry Officer conducted himself in such a way during the enquiry that the worker was prevented from exercising his right of full participation therein or from putting forward his defence. I may point out also that it was not put to the witnesses that these chargesheeted workmen were active members of the Union so that the claim in the written-statement that they were victimised on that ground remains unsubstantiated.

Nevertheless, in so far as the Enquiry Officer observed that the worker had persistently refused to comply with the «repeated requests of the Managemnt» for which there is no evidence and the fact that the findings were prepared not by him but by another person, the order of dismissal cannot be sustained. But the charge of participation in the strike is admitted and has been proved before me.

Agencia Commercial Maritima: This company, which dismissed six of its workmen, employed 64 workmen in March-April, 1969, on its six barges. On the 1st of May, 1969, chargesheets were issued, the relevant part of which reads as below:

> «It is observed that you, either alone or in combination with others, are inciting and instigating other bargecrew to take part in the illegal partial strike that has continued since 21st February, 1969. The present strike is illegal, inasmuch as it has started and continued in contravention of the condition of service you had accepted ... The above act amounts to misconduct as defined under the model standing orders. As the same is in contravention of the service conditions prescribed in writing and accepted by you ... you are thererore charged with the offence of inciting and instigating other bargecrew to take part in the illegal strike ...».

Enquiries were conducted and the Enquiry Officers (there appear to have been two) finally held that the refusal to perform duties according to previous practice and contravention of conditions of service were established. The order of dismissal was rested upon «acts of indiscipline and violation of conditions of service».

It is unnecessary to set out the course of the enquiry proceedings, for Mr. Damania frankly conceded that he is unable to say that the require procedure was correctly followed.

I may however refer to one surprising feature about the record of findings. The findings say that «the complainant, Mr. N. K. Menon, stated that the said worker refused ... In spite of repeated oral instruction, the said worker perpetuated in his arbitrary action». Now, firstly, the record does not show, and it is indeed not claimed by the Enquiry Officer, M. W. 2, in his evidence, that any person was examined on behalf of the Management during the enquiry. The Statement found in the findings that «the complainant, Mr. N. K. Menon, stated ...» is clearly opposed to facts. If Mr. N. K. Menon was not examined at the enquiry, how the Enquiry Officers had access to a purported statement of N. K. Menon is not clear, and what is even more serious is that they relied upon some statement of N. K. Menon which was not recorded during the enquiry in the presence of the workmen. It may also be pointed out that the allegation that in spite of repeated oral instruction the said workmen refused to work is against the tenor of the evidence of N. K. Menon, which was given during the arbitration proceedings. Mr. N. K. Menon did not state before me that at any time he contacted any of the workmen and gave them any instructions which were disobeyed.

That the Enquiry Officers adopted a routine method of dealing with the matter is apparent from another circumstance. Of the six persons who were dismissed, two, Shri Prabhakaran and Shri A. D. Joseph, are Drivers. The others are sailors. The findings of the enquiry in all these cases are identical. While the statement found in the findings of enquiry: «The complainant, Shri N. K. Menon, stated that the said worker refused to start the engine for certain periods from 21st of February, 1969», may suit the case of Prabhakaran, who is a Driver, such a statement would hardly suit the case of Shakul Mamood, for instance, who is a sailor. The record of findings as against the workman, Shakul Mamood, also states that the said workman, refused to start the engine. It is nobody's case that Shakul Mamood was in charge of any engine. This clearly indicates that the Enquiry Officers had very little regard to the facts elicited or proved against each workman. They merely adopted a routine method of disposal of the six cases.

It would follow from the above that the charge that these workmen incited or instigated others to participate in the partial strike was not established. The question would however survive whether the other part of that charge, viz., that these workmen themselves participated in the partial strike (an aspect of the charge of which the workmen were

fully aware) which is in fact admitted, would justify dismissal of these workmen.

In each of the following two cases, there were two chargesheets and two enquiries against the workmen concerned.

V. M. Salgoacar & Brother Pvt. Ltd.: Six workmen among over 200 employed by this company were dismissed. Show-cause notices were issued on the 25th of February calling upon these workmen to explain the stoppage of work, which was alleged to be in breach of the existing practice and against the terms of the settlement dated the 30th September, 1964. A uniform reply was submitted by all of these workmen denying the binding nature of the settlement on and after 31st December, 1967. Thereafter, chargesheets were issued which fixed the dates and the times of the enquiry in respect of each. The enquiry was conducted by Mr. J. Crasto, at which one Mr. Vakil, the River Fleet in charge, was examined in the presence of the workmen. The workmen did not choose to cross-examine Mr. Vakil. Thereafter questions were put to the workmen, but they refused to sign the record of the enquiry proceedings. The fact of their refusal was attested by certain witnesses. That completed the enquiry and the Enquiry Officer submitted his findings in each of these cases. The finding was that the stoppage of work by the workmen amounted to a strike which was illegal and that the charges of wilful refusal to carry out the lawful orders of the superiors and the commission of acts subversive of discipline were satisfactorily established.

Now, according to the written-statement of the company, certain further facts came to light during these enquiries and a second chargesheet was issued on the 1st April, 1969. This charge was that these workmen had threatened, instigated or acted in furtherance of the strike, committed breach of settlement or incited or instigated the workmen to commit breach of the settlement. These charges were denied by the workmen. A second enquiry was accordingly conducted into this chargesheet by Mr. Crasto, who examined the Management's witness, one Mr. Vakil, in the presence of the workmen. Some of the workmen produced one or more witnesses in defence. The Enquiry Officer in due course recorded his findings in which he held the workmen to be guilty of the further charges against them. Accepting these findings, the Management passed orders of dismissal; but the letters sent by registered post were returned undelivered. Thereafter, the company displayed copies of the dismissal order on the notice board of the office and also published it in the local dailies. The contention of the company is accordingly that a full and proper enquiry was held at which adequate opportunity was given to the workmen to defend themselves and that the dismissal of the workmen is fully justified.

In the written-statement of the Union, the broad charge levelled against the Management is that these persons have been singled out from among the numerous employees of the company only because they were active workers of the Union and the Management choose to victimise them. It is also claimed that the enquiry was not conducted properly and that the findings are perverse. It is denied that the acts of the workmen amount to any misconduct, for there are no model standing orders applicable to the case of these workmen. It is further alleged that the enquiry records in each of these cases are so identical that it raises a doubt whether the enquiry was at all conducted, and it is alleged that the Enquiry Officer did not apply his mind to the facts of each case.

In this particular case, a large number of witnesses, both on the side of the Management and on the side of the workmen, were examined before me, and I am asked to go into the merits of this case as well. I shall omit matters of a general nature spoken to by these witnesses relating to a series of prior disputes between the bargeowners as a whole and the workmen. Mr. Correia, the Administrative Manager of the company, stated that in the show-cause notices that were issued in the first instance, no specific standing order was indicated as having been violated. He admitted that in cases of dispute between the workmen and the Management, the representatives of the workmen would approach the Management for discussions, but denied that any of these six persons were prominent in the group of workmen who came for such discussions. He denied also that any of these workmen ever came to him in a representative capacity for discussions. These questions were apparently put to him in cross-examination in support of the contention of the workmen that they had been victimised by reason of their association with the union.

Mr. Ferrao, Personnel Officer of the company, who is in charge of the labour matters, stated that the settlement of 30th Sepember, 1964, was not terminated by way of any notice by the workmen. His version was that after the enquiry was completed and the findings were submitted by Mr. Crasto, he felt that the dismissal was necessary in the interests of discipline and ordered it. According to him, the persons upon whose information the second chargesheet was issued were examined during the second enquiry. He denied that he was present at the enquiry itself or took part in the questioning of the witnesses.

Mr. Crasto spoke in detail to the proceedings of the enquiry. He asserted that the witnesses for the Management were examined in the presence of the delinquents and that full opportunity was given to the delinquents to cross-examine those witnesses and to lead defence evidence. He denied the suggestions that the signatures of the witnesses to attest the refusal of the workmen to sign the record of the proceedings were taken subsequently.

Mr. Furtado is a clerk employed in the company. According to him, he was called in at the close of the enquiry and in his presence the workman was asked to sign the record of the proceedings. On his refusal to do so, this witness signed the record to attest the fact that the workman had so refused. The only important feature of this witness is that he admitted that J. Fernandez and Pascal Sequeira were two of the persons who used to go for discussions with the Management.

The next witness, Mr. Vaithanathan, who is the Legal Assistant of the company, was also called in to attest the refusal of the workmen to sign the record. He denied the suggestion made to him that he appended his signatures not on any such occasion but later on for the purpose of manipulating the records.

Mr. Vakil, who is a Senior Executive of the company and who was in charge of the river fleet section since January, 1968, spoke to the method of working the barges and to the fact that before the bargecrew entered upon the strike, no intimation was given. He was one of the witnesses examined at the domestic enquiry. He admitted that all the bargecrew of the company acted in an identical fashion in so far as the restriction of the hours of work was concerned and that there was nothing to distinguish the case of one person from another. He also denied the suggestion that he appended his signature to the record long subsequent to the enquiry.

These six workmen who were dismissed gave evidence. All of them state in one voice that at the time of the so-called enquiry at which he was present, no other person was present, and in particular, Mr. Vakil, who figured as a witness for the Management, was not examined in his presence. Pascal Sequeira stated further that when he produced his witnesses, they were examined by Mr. Crasto, and at this time Mr. Vakil was present and he too questioned those witnesses. He claimed also that he had given the names of several witnesses in his explanation, but they were not sent for or examined. According to him, he is a member of the Goa Dock Labour Union and that he and the remaining five persons were all members of the Action Committee of that Union and it was for that reason he claims they were all dismissed. He admitted in cross-examination that the explanation to the show-cause notices was prepared by the Union in a cyclostyled form. He claimed that though he was questioned by Mr. Crasto, Mr. Crasto did not record anything and did not ask him to sign any record. At this enquiry, according to him, Mr. Crasto only told him that he should work for 24 hours, failing which he would be dismissed. At the second enquiry also, beyond a mere discussion of the chargesheet, nothing else happened. Even when his witnesses were examined by Mr. Crasto, he made no record. He denied in particular that any person were called in, as alleged by Mr. Crasto, to sign the record in token of the delinquent's refusal to sign it.

The evidence of the remaining persons — J. Fernandez, Tulsidas Betcar, Gurudas Tari, Raghuvir Duicar and Dangu Naik, was identical with regard to the scope of the enquiry. All of them contended that nothing was recorded at these enquiries, that Mr. Vakil was not examined in their presence, that virtually the only thing that happened was that Crasto warned them that they would be dismissed if they failed to work for 24 hours. A detailed examination of the evidence of these witnesses would serve no useful purpose.

One other witness examined on behalf of the workmen is John DSouza, who claims to have been employed in this company till 1969. According to him, these six workmen who stand dismissed are persons whom the employer used to call for discussions. With special reference to his claim

that these six persons were representing the bargecrew in general in discussions with the Management, he could give no particulars. He admitted also that a short while before he left the service of this company, there had been some chargesheets against him.

At the second enquiry following the second chargesheet, once again Mr. Vakil was examined and his evidence was nothing more than that Fernandez had resorted to restricted hours of work. Indeed, his evidence on this occasion was no different from his evidence on the other occasion. But, in so far as the evidence of the Management's witness was concerned, there was no whisper therein of any threatening or instigating any illegal strike, or inciting or instigating the workmen to commit a breach of the settlement. The evidence on behalf of the Management merely covered the same point as before, namely, that the workmen refused to work, broadly speaking, during the night time.

In the findings recorded regarding the second charge, the enquiry officer came to the surprising conclusion that this charge of instigating other members of the crew to join in the stoppage of work was established. But nowhere in the record of the findings or in the record of the evidence is there any reference to any evidence of any factual incitement or instigation as alleged.

The order of dismissal that was passed by the Management on the 8th of May, held that the charge of wilful refusal to carry out the lawful orders of the superiors, instigating or acting in furtherance of an illegal strike, commission of an act subversive of good behaviour and discipline, committing breach of settlement or instigating or inciting to commit breach of settlement were all established. From what I have stated above, except for participating in the strike, which may or may not involve commission of an act subversive of good behaviour or discipline, no other head of charge was supported by any evidence recorded at the enquiry.

Emco Goa Limited: The person dimissed by this company is Varu Babli Porob, who was the Captain of the only barge owned by this company. The first chargesheet issued to Porob is dated 28th February, 1969. The charges were:

(1) wilful refusal to carry out the lawful orders of the superiors;

(2) participation in an illegal strike; and

(3) commission of an act subversive to discipline.

It appears from the records that during the enquiry into this chargesheet, some additional information came to light as a result of which a further chargesheet was issued to Porob, dated 28th March, 1969, which set out the following misconducts:

(1) threatening, instigating or acting in furtherance of an illegal strike;

(2) commission of an act subversive of good behaviour and discipline; and

(3) committing breach of setltement or inciting or instigating workmen to commit breach of the settlement.

Before me, Mr. Pereira, the Manager, gave evidence that he directed the issue of the chargesheets. He appointed Mr. Gaitonde as the Enquiry Officer. He stated that both he and another person were examined as witnesses in support of the charge, both of whom Porob declined to cross-examine. Now, it appears that three other persons were chargesheeted, they being one Kasinath Pari, Natesh Naik and Jaganath Porob. According to Pereira, what these three persons stated in the course of the enquiry into the chargesheets against them furnished the required information for the framing of the second set of charges against Varu B. Porob. This second enquiry was also conducted by Gaitonde, and at this enquiry Kasinath Pari, Natesh Naik and Jaganath Porob were all examined on behalf of the company and against the chargesheeted Varu B. Porob. But somewhat surprisingly, these witnesses refused to sign the record of the evidence. None of these persons was examined on behalf of the company during these arbitration proceedings before me. Mr. Pereira, the Manager, admitted during his cross-examination that the company did not take action against these three persons who were also chargesheeted «as it appeared that Porob in this case was the ring-leader». In the present case also, the evidence of the witnesses against Porob was not recorded in the form of a narrative but by way of a series of questions put to the witnesses by the Enquiry Officer, nor was the record of their statements signed by the witnesses.

Varu B. Porob gave evidence. According to him, no one was present when the Enquiry Officer, Gaitonde, questioned him. Neither Pereira nor any other witness was present or was questioned in his presence. As the Enquiry Officer did not give any of the papers which he was asked to sign, he refused to sign those papers. He claimed that he was asked to go from place to place for the purpose of the enquiry. He made the further claim that the three persons upon whose evidence the second set of charges was framed against him were not examined at all but that they were on the barge at the time of the alleged examination.

The Enquiry Officer, Mr. Gaitonde, stated before me that at the time of the enquiry into the second chargesheet, that is, on 5-4-1969, Varu B. Porob appeared and gave him a letter requesting time, as he desired to bring some witnesses. The Enquiry Officer refused to grant the adjournment, as the witnesses were in the locality and could be brought by Porob, and thereafter conducted the enquiry *ex parte*. It is noteworthy that a great deal of reliance has been placed by the Enquiry Officer upon the evidence of the three other persons referred to in coming to the finding that this person was guilty of the charges against him.

It is the contention of Porob that he attended the first enquiry at which he was questioned by the Enquiry Officer, but that neither Pereira nor Vishwambar was examined in his presence. Admittedly, the second enquiry was held *ex parte*. I do not see any reason to doubt the evidence of Pereira, the Manager , or Gaitonde, the Enquiry Officer, when they say that at the first enquiry, Porob was present when the witnesses were examined. No such allegation as now made appears in the written-statement filed by the Union, though according to Porob , he met Mr. Mohan Nair more than once. I am unable to believe him when he says that he did not discuss with Mr. Mohan Nair what happened at the enquiry. There is no doubt that the first enquiry was properly conducted. This enquiry was with reference to three heads of charges stemming from a single circumstance, namely, that Porob refused to work between 6 p.m. and 7 a.m. Indeed, that Porob took part in the partial strike is not in dispute.

Coming to the second set of charges which allege instigation of the illegal strike and instigating other workmen to commit breach of the settlement, the scope of the evidence against Porob is far from clear. It is stated both by Pereira and Gaitonde that three members of the crew stated in the course of their examination in the enquiries into the chargesheets against them that Porob has acted in a particular way and that these statements led to the second chargesheet against Porob. Gaitonde stated in his evidence before me thus: «When I held the enquiry against other 8 bargecrew, it transpired that the explanations given by them were obtained by Porob without their being aware of the contents and that one Sukani had been instructed by Porob to stop work outside 7 a.m. and 6 p.m.» During the second enquiry which was *ex parte*, Gaitonde questioned the three persons who, I suppose, made such statements against Porob. But these three persons refused to support that version and in fact, one of them, Nagesh Naik, stated that he knowingly signed the explanation to the show-cause notice, which was brought to them from the Union's office on his request by Capt. Porob. Except for what we can gather from the trend of the questions put by the Enquiry Officer to these persons, there is no evidence that these persons said anything which could form the basis of the second set of charges. It seems to me that this set of charges has failed of proof.

The surviving question is whether the dismissal of Porob is justified for his admitted and proved participation in the strike.

Bandekar Parkkot Shipping (Pvt. Ltd.): Of the five workmen dismissed by this company, three are Captains, one a Driver and the last is an Oilman. The charges against each of these persons will be considered separately.

C. D. Tari, Captain: This person was directed to give an explanation why he carried about 70 labourers on his barge at 9.30 p.m. on 19-2-1969, in violation of the rules. As he submitted no explanation, a chargesheet in that regard was issued on the 5th of April, 1969, and an enquiry was held on the 9th of April, 1969. According to the record, Tari was present and he admitted the charge. His statement, as recorded during the enquiry by the Enquiry Officer, Mr. Joshi, was that he took the barge to the steamer in order to prevent two other barges of this company MANGESH and NAGESH from carrying on operation after 6 p.m. He added however that he did not voluntarily carry these 60 or 70 persons but that these persons rushed on the barge and he

had necessarily to take them. After the Enquiry Officer had questioned Tari, one Satyapal Bandekar, Manager of the company, desired to say something regarding the case and he made the statement to the effect that he received «some information» that C. D. Tari had taken about 100 workmen on the barge, went alongside the steamer and compelled certain other barges MANGESH and NAGESH to discontinue the operations. Upon this material, the Enquiry Officer gave findings to the effect that Tari had admitted the charges against him. He found that the charges were grave and recommended summary dismissal without any notice of compensation in lieu of notice. Turning to the record of the enquiry, it is seen the Enquiry Officer questioned Tari. In reply to him, Tari stated that he had explained the matters to the Deputy Captain of Ports, Marmagoa. But what that explanation was was not elicited from him. What material the Management had in proceeding to frame this particular charge against him was not also brought on record. In reply to a question, Tari further stated that two barges, MANGESH and NAGESH were still on duty and ore was being unloaded from them on to a steamer of Sesa Goa Company. Because these barges violating the decision taken by the bargemen as a whole, he, Tari, took his barge, approached the steamer and apparently persuaded the crew of MANGESH and NAGESH to stop the work. But with specific reference to the carrying of several unauthorised persons on the barge, his explanation was that they rushed upon the barge and he had necessarily to take them. If his statement is accepted, while no doubt he took the barge to the neighbourhood of the steamer and persuaded the crew of the other barges to stop work (which was not the charge against him), in so far as the carrying of unauthorised persons in the barge is concerned, he claimed that it was not a voluntary act on his part.

The Manager, Satyapal Bandekar, who gave evidence, stated that the company received two letters from the Deputy Captain of Ports. What those letters contained was not spoken to by the witness. Nor were those letters proved in evidence. He proceeded to say that on enquiry he came to know that Shri Tari had taken about 100 workmen on the barge and «compelled» the other barges, MANGESH and NAGESH to discontinue operations. Obviously, this part of his version is hearsay. The question accordingly would be, whether in these circumstances, the penalty imposed upon the workman is justified.

Even disregarding that part of the finding that he dissuaded other barges from carrying on work beyond 6 p. m., the record of enquiry purports to contain his own admission that he did carry a large number of persons on board, contrary to the rules. Now, Mr. Joshi admitted in his evidence that the notes of enquiry as contained in the record is not *the original* and that portions of the statement of Tari as recorded by him were in Marathi. That original has not been produced before me. If any reliance is to be placed upon an admission alleged to have been made by a charge-sheeted workmen, it is imperative that such admission should be recorded in his own words. If Satyapal's evidence is regarded as hearsay, the finding of the Enquiry Officer rests only on Tari's admission, the real purport of which is not proved. The finding and the order of dismissal have necessarily to be held unjustifiable.

Shri S. M. Phadte: The charge against him was that either alone or in combination with others, he incited and instigated other bargecrew to take part in the illegal partial strike. An earlier show-cause notice had been issued to this workman on the 3rd of April, alleging that he along with other bargecrew members had unilaterally resorted to work for shorter hours from the 16th of February 1969, onwards. The reply sent by Shri Phadte to this show-cause notice was that he had been on leave from 13th of February, 1969, up to the 31st of March, 1969, and that he was not therefore liable to explain the working hours of the bargecrew from 16th February, 1969, onwards. The show-cause notice contained other allegations which are not relevant in the light of the charge, which was restricted only to inciting and instigating other bargecrew.

According to the records of the enquiry, Shri Phadte was not present, though the enquiry had been adjourned from time to time on request made by him. At the *ex parte* enquiry which was conducted, Shri Satyapal Bandekar, the Manager of the company, was examined. He spoke to the prevailing conditions of work and to the fact that the workmen had refused to work during certain hours of the day. With reference to Shri Phadte, he stated that he had taken leave from 14th February, 1969, and was expected to resume duty on the 1st of March, 1969. He did not do so but asked for extension of leave. Finally, the Manager said:

> «Since resuming the duties, he has been indulging in instigating other workmen to take part in the strike».

On this evidence, the Enquiry Officer summed up saying:

> «After resuming duty, he seems to have assumed leading part in the partial strike and he led the workmen on the 1st of May, 1969, when they had stopped work for collecting their wages for March, 1969. He was shouting in the office when he had not to collect his wages».

It does not appear from the evidence of the Manager that he personally witnessed any abetment or instigation by Phadte. According to the Enquiry Officer, Mr. Joshi, who was examined before me:

> «The evidence of instigating and abetment was that of the Manager, Satyapal Bandekar, who said that he received complaints from other workmen. He did not however produce any letters of complaint, nor were any workmen examined to speak to the abetment or instigation».

That being the case, it is difficult to see how the Enquiry Officer came to the conclusion that the charge of inciting other workmen was established. There was also no evidence before the Enquiry Officer that Shri Phadte has assumed a leading part in the partial strike. The findings cannot obviously be supported by the evidence on record. Particular reference may also be made to the fact that this workman was on leave during the relevant period and there is no evidence that at that time, he took part in any incident which would colourably be represented as incitement or instigation. The finding is undoubtedly wholly unsupported by any evidence relevant to the charge.

The remaining three workmen are Shri Narvencar, a Captain, Shri Rohidas Savant, a Driver, both of VEERAMATA, and Shri P. K. Job, Oilman of the barge ADISAKTI. The charges against them were identical with those against Shri Phadte, whose case has been dealt with in the preceding paragraphs. According to Mr. Joshi, who conducted the enquiry against them on 13-5-1969, they admitted the receipt of the charge-sheets. He then proceeded to record their statements which consisted only of a question whether they admitted the charge. Thereafter, the Enquiry Officer examined the Manager, Satyapal Bandekar. Mr. Bandekar stated that he had received complaints from other workmen that Shri Narvencar was threatening those workmen who were willing to perform their duties as before. His evidence of the alleged threatening was equally against the other two workmen, Sawant and Job, as well. Thereafter, the Enquiry Officer put some questions to Job. He did not similarly question the other two workmen. In the case of Job, he questioned him with regard to the pattern of work and elicited the fact that the bargecrew did have rest either at the loading point when the barge was being loaded or in the breakwaters when the barge was being unloaded by other persons. He also elicited the fact that the workman did not inform the company that he would work only for eight hours in the future. According to the record, Job also admitted that he was advising the other workmen to follow the decisions of the Union.

It is upon this material that the enquiry officer came to the conclusion that the charge was established against these workmen and recommended their dismissal. It will be seen from what has been stated above that the only charge that could be said to have been established was that these workmen curtailed the hours of work from 16-2-1969 onwards without any previous intimation to the company, which amounted to taking part in the strike. The further charge that they threatened or instigated other workmen can hardly be said to be established on the basis of the evidence. The Manager, Mr. Bandekar, who was the only person examined during the domestic enquiry (but not before me) only stated that he had received complaints from other workmen who were otherwise willing to perform the duties according to the prevailing pattern. From whom he received those complaints and what the nature of those complaints was were not made clear in the evidence, and, indeed, this statement of Mr. Bandekar speaking to this fact must be regarded only as hearsy, for he does not claim to have been present at the time when any of these workmen offered any threats to other workmen. It was also be noticed that even in the summing up, the Enquiry Officer does not find any of these workmen guilty of inciting or threatening other workmen. He merely stated that the workmen had admitted joining

the partial strike and that the strike was illegal and unjustified.

Despite the fact that the findings in these cases did not record that the workmen were guilty of inciting or instigating other bargecrew to take part in the illegal strike, the order of dismissal issued by the Management purports to read the finding of the Enquiry Officer as establishing that part of the charge as well. The dismissal order reads:

> «As a result of the enquiry, it is proved beyond all doubt that you have taken part in the illegal strike commenced from 16-2-1969 and you have incited and are instigating other members of the crew to take part in the strike».
>
> «To go on strike and to instigate other to take part in it are offences of a serious nature meriting summary dismissal from service...»

From what has been stated, the dismissal in so far as it is based upon such a misreading of the findings cannot be supported. The only question that will have to be considered in these cases is whether participation in this strike, which is not denied, could justify the dismissal.

Sarashwathi Industries Commerce Pvt. Ltd.: In this case, one Sakaram Fotto, Captain of the barge AKYAB, and Lakshman Paggi, Captain of the barge SARASHWATH, were chargesheeted and after enquiries were dismissed. Initially, a show-cause notice dated 26th February, 1969, was issued to these two persons calling upon them to explain their failure to work between the hours 6 P. M. and 7 A. M. The uniform reply of these workmen was that it was not fair for the employer to expect more than 8 hours of work and that failure to work beyond 11 hours between 7 A. M. and 6 P. M. only could not be considered a misconduct. By the time the chargesheet was issued, certain events had happened. It would appear that during the night of the 13/14th May, 1969, a large number of barges, including some of this company, were taken to a place Cortalim, where they were anchored. It may be noticed that from the following day, there was a total strike by all the bargecrew of his and several other companies. It was in respect of this unauthorised removal of the barges to Cortalim that charges were framed against these two persons. The chargesheets against each of these workmen stated that on the 13/14th May, 1969, in concerted action along with the other bargecrew, «although you were directed to await orders and continue to anchor the barge at Marmagoa Harbour, you, contrary to instructions, proceeded to Cortalim and up to the 19th May, 1969, detained the barge there without any intimation to or permission of the Management, and assumed illegal control of the said barge and deprived the Management of its legitimate right to use the barge for its business activities». It was also stated in the chargesheet that the barge was anchored along with numerous other barges, that the propeller of the barge was tied with wire ropes and that the anchor of the barge was interlocked with the anchors of other barges, rendering the normal manoeuvring exceedingly difficult, and further that the spot where the barge was anchored was neither the normal place for anchoring nor a safe place. It was further alleged that he retained illegal possesion of the keys, etc., of the cabin and the engine-room even after he left the barge on the 19th May, and that he had tampered with various supply lines, etc. On the basis of these facts, several heads of charges, as many as 8 in number, were framed. It is unnecessary to set out all these heads of charges, for, finally, the dismissal order was based upon only the charge of removing the barge from the company's custody, and taking it to Cortalim without any justification.

It may be stated that all the crew of the two barges were proceeded against by way of chargesheets, but as several of them had refused to accept delivery of the chargesheets sent by registered post, the company placed advertisements in English and Marathi in the local dailies, bringing to the notice of the bargecrew that the enquiries would be held on the dates mentioned therein and calling upon them to be ready at the enquiry, failing which the enquiry would be conducted *ex parte*.

The enquiries were ultimately conducted on the 23rd of June, 1969, by Mr. Joshi. Sakaram Fotto is said to have been present at his enquiry, while Lakshman Paggi was not. During the enquiry, one Ramgopal Dayma, the Cashier of the company, was examined, and he spoke to the fact that the bargecrew had adopted restricted hours of work from February onwards. In accordance with the altered pattern of work which they were following, the barge was to remain anchored within the breakwater at Marmagoa Harbour, from 6 p.m. till the next morning. It was so anchored on the evening of the 13th and there were no instructions issued to the Captain to move the barge during the night. On the following morning, he did not see the barge at the harbour and he made enquiries and learnt that the barge had been anchored at Cortalim. Subsequently, police help was requisitioned and the possession of the barge was taken on or about the 20th of May. What is stated above applies to the case of both the barges. After taking possession of the barges, a check was made and it was found that the anchors of the barges were interlocked and the propellers were found tied by wire ropes.

This evidence was given by Ramgopal Dayma in the presence of Sakaram Fotto, who, according to the record, declined to cross-examine the witness. The record of enquiry in the case of Sakaram Fotto also shows that he admitted the fact of the taking of the barge to Cortalim. He claimed that he did so as a participant in the strike. As stated already, Laksman Paggi was absent at his enquiry.

Ramgopal Dayma was examined before me and he spoke to the above facts. It was elicited from him that a cyclostyled form of the chargesheet was prepared, apparently one obtained from some other company, which was dealing with similar matters. According to him, Mr. Joshi, who conducted the enquiry, examined Sakaram Fotto and did not examine any other persons. If this witness is right, it would mean that his statement (Ramgopal Dayma's statement) was not recorded by Mr. Joshi in the presence of Sakaram Fotto. Mr. Joshi, who conducted the enquiry, also gave evidence before me. His version however was that Sakaram Fotto was present and he questioned Sakaram, who admitted having received the chargesheet and admitted also the alleged misconduct. He claimed that he recorded the statement of Ramgopal Dayma in the presence of Sakaram Fotto.

The finding of Mr. Joshi in the two cases was that the two persons were guilty of taking the barges unauthorisedly to Cortalim and anchoring them there.

Whatever the defects, if any, in the enquiry may be, there is no doubt that the barges in the two cases were taken to Cortalim. The evidence of Ramgopal Dayma before the Enquiry Officer was that the company recovered possession of the barges with the help of the Police on the 20th May, 1969. The dismissed workmen did not give evidence before me and it is not even stated in the Union's statement that the barges were taken to Cortalim in the course of the performance of their normal duties. From the surrounding circumstances, viz., the total strike that was launched from 14-5-1969, the fact that these two barges were anchored at Cortalim along with over 100 other barges of other companies, that Police help had to be requisitioned before the company could regain possession of the barges, there is no doubt that unauthorised removal of the barges and keeping the company out of possession of the barges are proved. That these persons did so by way of response to the strike call is not in fact denied. I shall consider later whether the punishment of dismissal can be sustained or any lesser punishment would suffice.

V. N. Bandekar: The persons dismissed by this company are 1. Vaman Ladu Naik, Captain of the barge NARAYAN and 2. A. C. Fernandez, Driver of the barge SAMBU PRASAD.

The chargesheet dated 9-5-1969 issued to Naik set out that he, either alone or in combination with others, took the barge NARAYAN out of the breakwater on or about 18-2-1969 with 50 or 60 unauthorised persons on board; that with those persons on board, he tried to assault the barge belonging to Messrs. Bandekar Parkot Limited, which was engaged in loading Messrs. Sesa Goa's steamer; and that he was allowing the bargecrew to leave the barge and did not mark their leave of absence on the card.

The charges against A. C. Fernandez were that since 16-2-1969, he was not following the instructions issued from the office regarding the movement of the barges and was taking part in an illegal strike; that he was instigating other members of the crew to take part in the illegal strike; and that on 3-5-1969, he picked up an unnecessary quarrel with the Cashier and used some vulgar language. These alleged acts of A. C. Fernandez were stated to amount to misconduct being:

> (1) wilful refusal to carry out the lawful orders of the superiors;

(2) participating in an illegal strike;

(3) commission of an act subversive of discipline; and

(4) insulting and abusing members of the staff while on duty.

Mr. Pinge, Manager of the firm, who gave evidence, stated that the chargesheet was served on Naik on the 8th May, 1969. The copy that was sent to him by registered post was returned undelivered. A. C. Fernandez acknowledged the receipt of the chargesheet which was served upon him personally on 19-5-1969. Mr. Pinge directed Mr. Joshi, the Labour Officer of the firm, to conduct the enquiries. The witness stated that he was present at the enquiry with regard to Naik and that Naik refused to sign the records after the completion of the enquiry Mr. Joshi finally submitted his findings in both the enquiries. Mr. Pinge examined the records and decided upon dismissal of both of those persons. The orders of dismissal sent to them by post were returned undelivered.

In cross-examination, the witness stated that some negotiations were conducted after the commencement of the partial strike on the 16th February and that Naik, who was present at these negotiations, was not one who took any leading part. He admitted however that on an earlier occasion, Naik was granted leave by the company to attend the annual session of the National Port and Dock Workers' Federation, on a request in that regard being made by the Secretary of the Goa Dock Labour Union. He admitted that he, Pinge, was present at the time of the enquiry into Naik's case. He was not however present at the enquiry into Fernandez's case. He made the somewhat startling admission that after he received the findings in the case of Fernandez, he sent for the witnesses and questioned them and satisfied himself with regard to the matter before he passed final orders. At such further examination of the witnesses by Pinge, the Manager, Fernandez, was not present.

Mr. Joshi, who conducted the enquiry, spoke to the mode of the conduct thereof. Both persons refused to sign the record. In cross-examination, Mr. Joshi admitted that after the commencement of the strike, he met some of the workmen and told them that their action was illegal. He did so on his own initiative as the Labour Officer of the company. He also attended the meetings of the Association where the bargeowners in general discussed taking disciplinary action against the striking crew and also various proposals for settlement. He further admitted that the chargesheet in the case of Fernandez was defective in that it did not specify the particulars from out of which the alleged misconduct arose. In the case of Fernandez, the third charge arose out of his taking the barge to Cortalim on the 13th of May. Mr. Joshi claims that he told Fernandez so; but wherefrom this information is derived is found nowhere in the recorded evidence. Mr. Joshi further admitted that it is the Captain who is responsible for moving the barge, while Fernandez is only a Driver; that the Captain of the barge was not chargesheeted, but Fernandez was chargesheeted because he was operating the engine. Mr. Joshi also admitted that the first charge of refusal to obey the directions of the superiors did not refer to any specific act of disobedience but only to the general refusal of all the workmen to work during the period 6 p. m. to 7 a. m.

With regard to Naik, Mr. Joshi stated that Naik was on leave prior to 14-5-1969 and that it was not a fact that he had come to the office on that day to seek an extension of leave. He denied that Naik had no knowledge of the chargesheet or that he was detained and forced to appear at the enquiry. Mr. Joshi admitted that Naik was one of the leaders of the bargecrew.

In the enquiry into Naik's case, it is the claim of the company that one Vithal Chowdankar, a sailor on the barge of which Naik was the Captain, was examined. In these arbitration proceedings, this Chowdankar stated that he does not recall any occasion when Joshi sent for him and recorded his statement in the presence of Naik, but that Joshi questioned him about taking the barge to the ship and at that time only Joshi was present and Naik was not present. In the records of enquiry, where the statement of Vithal Chowdankar is purported to have been recorded and when his examination was directed to establishing the charge against Naik, this Chowdankar stated that he did not personally witness the incident when the barge was taken to the ship with 40 or 50 unauthorised persons on it and that he heard about the incident from other people, so that it is clear that in so far as this charge against Naik is concerned, Vithal Chowdankar did not support that charge.

In both of these cases, the Enquiry Officer did not take down the evidence of the witnesses in their own words, nor did the witnesses sign the alleged statements which were recorded from them.

Both Naik and Fernandez gave evidence. It was Naik's case that he was on leave on 14-5-1969, when a member of the office happened to meet him and told him that he was wanted at the office. He went there. He was not given any chargesheet, but Mr. Pinge, the Manager, told him to wait for the Labour Officer. When the Labour Officer came and told him that there was to be an enquiry against him, he asked him what the charge was and was told that the charge related to his having taken the barge unauthorisedly, which he denied. Naik thereupon asked the Enquiry Officer to give the charge to him in writing so that he could contact the Union and prepare his defence. The Enquiry Officer told him that he had no time, where upon he left the place. Naik denied that there was any enquiry at all, and claimed that it was not till he saw the newspaper that he came to know of his dismissal.

Fernandez admitted the receipt of the chargesheet and on the advice of the Union appeared at the office for the enquiry and demanded to be furnished particulars and other details relating to the charges. The Labour Officer however stated that he had no time. Fernandez denied that any witness was examined as long as he was there. Nor did Mr. Joshi record any statement from him. The case of both of these persons is accordingly that no enquiry was conducted in their presence.

The summing up of the Enquiry Officer in Naik's case requires to be referred to. In this summing up, the Enquiry Officer sets out what the witness, Vithal Chowdhankar, is said to have deposed before him. The extract of the evidence of that witness is totally different from what appears as his statement in the record of the enquiry. In fact, during the enquiry, this Chowdhankar stated clearly that he did not personally witness the incident of the unauthorised use of the barge, but that he heard it from other people. But, in the summing up, the Enquiry Officer has recorded facts which do not at all appear in the purported statement of the witness during the enquiry. In the summing up also, the Enquiry Officer has made a remark that the two witnesses examined in support of the charge, Chowdhankar and Haris-chandra Vaigankar, were «rather afraid and were halfhearted in giving out information. Just before the enquiry, a Sukani presented a written complaint that he was threatened by the Captain and others and that it would be difficult for him to move freely in Vasco, and he showed his willingness to resign the service of the company». No such complaint appears in the record, nor did this Vaigankar speak to any threats or consequent apprehension.

In the case of Fernandes, the last charge was considered more important than the others by the Enquiry Officer. The notes of enquiry show that Fernandes was asked whether he admitted the charges and the record of reply of Fernandes is, «I admit Charge No. 1 and 3 and I deny Charge No. 2 and about Charge No. 4, I have to say someting». What he desired to say about Charge No. 4 was not recorded by the Enquiry Officer, who proceeded to examine one Shirodkar, the Cashier, whom he is alleged to have insulted. Thereafter some questions were put to Fernandes with regard to the partial strike and the movement of the barge during the night of 13th May, 1969. But no question was put to him regarding the alleged insult offered to Shirodkar, nor was he asked to clarify his earlier statement that he had something to say about Charge No. 4. In his findings upon this charge, the Enquiry Officer states that Fernandes admitted having uttered some abusive words and the record as made by the Enquiry Officer reads:

> «Mr. A. C. Fernandes clarified that ... he uttered bad words for those who were responsible for delaying the payment and not for Shri Shirodkar».

It appears that when Fernandes called for his pay for the previous month, he asked for details with regard to the amount that he was paid. Shirodkar was unable to enlighten him. The complaint of Fernandes was that he had not got daily allowance and that it was in these circumstances Fernandes claimed to have used some strong language not against any one in particular but in general. It may be worthwhile to notice that the charge does not specify the details and the circumstances in which the alleged abusive language was used, and it is claimed by Fernandes during his evidence before me, that he asked the Enquiry Officer to enlighten him on his point but that he failed to do so.

Reverting to the evidence against Naik, while witness Harischandra Vaigankar spoke to the taking of the barge Narayan to the steamer at about 4 A.M. during the night, he admitted that he was asleep and woke up to see the barge alongside the steamer. He did not however speak to any attempted assault on the barge that was unloading at the ship. With reference to the charge that Naik was allowing the bargecrew to leave the barge without recording their absence on the card, no witness spoke to it before the Enquiry Officer, except Vithal Chowdhankar, who stated that he obtained permission of the Captain Naik to go to his relation's house for a bath. Whether the grant of such permission to Chowdhankar was improper or not, this piece of evidence certainly does not establish the charge that Naik was habitually acting in that manner.

The specific findings recorded by the Enquiry Officer are: (1) that Naik had taken about 40 persons on the barge and that he *stopped* the loading operations of another barge; and (2) that he relieved Chowdhankar and failed to report it. The evidence of neither Chowdhankar nor Vaigankar satisfactorily supported the first finding; and indeed, Chowdhankar during his examination before me denied that he made any statement in the presence of Naik. Nor does the fact that Naik granted permission to a deckhand, presumably when the barge was not on active duty, amount to any misconduct that I can see.

The dismissal of Naik is wholly unjustified.

In the case of Fernandez, the only charge that was established was that he participated in the illegal strike and nothing more.

Agencia Ultramarina Ltd: This company owns only one barge and employed nine workmen. The dismissed workman, Vishnu D. Morzo, was the Captain of the barge DUSOLA. The crew of this barge also participated in the partial and the total strike. In the statement of the company, it is claimed that the Captain refused to carry out the instructions specifically given to him to proceed to Sircaim for the loading of ore. It is stated that while going to Sircaim, he halted the barge at a place called Khorjuem and further moved the barge at night negligently and grounded it. He gave no information to the company. This incident took place on the 21st February, 1969. He was charge sheeted and after one or two adjournments, the enquiry was finally held on 30-4-1969. The officer in charge of the barges, Bhobe, was examined in the presence of the workman, who did not however cross-examine the witness. The Enquiry Officer thereafter recorded the statement of the workman, completed his enquiry and submitted his findings, wherein he found the workman guilty. This was followed by an order of dismissal.

In the statement of the Union, it is alleged that the Enquiry Officer merely recorded the statement of the witness, Bhobe, and thereafter questioned or cross-examined the workman. It is also claimed that in the findings, the Enquiry Officer relied on information which was not proved at the time of the enquiry and the findings must be regarded as perverse. Somewhat surprisingly, the version of the occurrence as given by Morzo before me does not find place in this statement.

Before me, Mr. Menezes merely gave evidence of a formal nature, producing the records of the enquiry. He, as Manager of the Company, received the findings from the Enquiry Officer and passed orders directing the discharge of the workman.

Mr. Joshi, the Labour Officer of the company, conducted the enquiry in this case. The manner in which he conducted the enquiry was this. He questioned the workman first and then examined Bhobe as the witness for the company. The workman declined to cross-examine Bhobe. Thereafter, the Enquiry Officer questioned the workman and recorded such replies as he gave. He then examined one Souza. The workman did not cross-examine Souza. He questioned the workman and recorded the further statement that he made. The workman had no witnesses of his own and he also refused to sign the records. On the basis of the record of the enquiry, he gave his findings.

It was Mr. Joshi, who, in his capacity as adviser to the company on labour matters, instructed the company that a show-cause notice should be issued and later that a chargesheet should also be issued. He denied the suggestion that he did not conduct the enquiry, or that the workman did not appear before him, or that the record of the enquiry was a concoted one. He admitted however that the witnesses were not asked to sign their statements.

Mr. Bhobe stated that on the 21st February, instructions were given through his assistant, Mr. Souza, to despatch the barge to Sircaim and Souza came and told him that he had given suitable directions to Morzo, the Captain, and that the barge had also sailed at 2 P. M. on that day. When on the following morning Mr. Bhobe went to the harbour, the barge was not there. According to the witness, the barge should have returned to the harbour by 5 or 6 A. M. after completing the work of loading at Sircaim. It was then that he came to know that the barge had been grounded and it had to be towed with the help of another barge. Later, it was found that the bottom of the barge had been damaged. 2 or 3 days after this incident, he called Morzo and questioned him and he gave no reply. Nor did Morzo himself report the incident to the Management. The log sheet of the barge was produced by this witness and it establishes that the barge left the harbour at 2.15 P.M. on 21-2-1969 and reached Sircaim only at 8 A.M. on the following morning. The statement of Bhobe that the barge would normally take only 7 or 8 hours to cover this distance was not challenged in cross-examination.

The next witness, B. K. Naik, was the Assistant Driver of the barge on the date of the incident. He stated that the barge left the harbour at 2 P. M. on 21-2-1969, and on the way to Sircaim, the Captain, Morzo, anchored the barge at Pomburpa. At 2 A.M. during the night, Morzo asked him to start the engine, which he did. The Captain then took the barge nearer to the shore and secured it there. At 4 A.M. the next morning, it was found that the barge was grounded, and another barge belonging to Sesa Goa Company towed it afloat. During cross-examination, he admitted that he and Capt. Morzo were not getting on well. He claimed that a statement was recorded from him by the officer in charge of the fleet, Bhobe. This is Ex. UD1 dated 11-4-1969. He denied that the contents of this report are false, or that the Labour Officer advised him to give the report in a particular way. He admitted that though he was only an Assistant Driver, he did have a permit to enable him to drive a barge which was fitted with two engines of 105 h. p. each.

The dismissed workman Vishnu D. Morzo gave evidence. According to him, the grounding of the barge was due to the negligence of the Asst. Driver, which fact he brought to the notice of the Managing Director when he met him on the 12th March. He admitted however that he gave no reply to the chargesheet. He asserted that no enquiry was conducted and that the only communication that he received was the one discharging him from service. During cross-examination, some other log sheets for certain dates from 16th onwards were brought to his notice which showed that even after the partial strike in general started on the 16th February, he did not stop work by 6 P. M. Morzo however maintained that though the log sheets might show otherwise, on and after the 16th February, he stopped work by 6 P. M. on every day. With specific reference to the incident, he asserted that when the barge was being stopped, he was giving directions to the Assistant Driver, who failed to follow the instructions and that was why the barge got grounded. He admitted that he did not give any immediate notice to the company, nor did he make a note of the incident in the log sheet. He was surprised to receive the show-cause notice. Neither by way of reply thereto nor to the chargesheet did he claim that he had informed the Managing Director or that the fault was that of the Assistant Driver.

The charge against Morzo was that he refused to carry out the instructions conveyed to him through Souza, that he unauthorisedly anchored the barge at Khorjuem during the night of 21-2-1969 and in such a negligent manner that it became grounded. Admittedly, he gave no reply either to the show-cause notice or the chargesheet. He admitted that he did not send word to the company immediately either by telephone or through another barge. His excuse for failure to do so is feeble; all the more so, as in his capacity as Captain, he should have at least suspected, if not known, that the barge could have been damaged by the grounding.

Coming to the enquiry, the stand taken by Morzo in his present evidence is acutely in conflict with the version given in the written-statement. Before me, it is claimed that he did not attend the enquiry, having been advised so by Mr. Mohan Nair, and that no witnesses were examined in his presence. In the written-statement, however, the challenge is to the genuineness of the notes of enquiry. It is interesting to note that nowhere in the written statement is there any indication of the present defence of the workman, namely, that the grounding of the barge was due to the carelessness

of the Assistant Driver or that these facts had been made known by the workman to the Managing Director, long before the issue of the show-cause notice.

I have examined the evidence of Mr. Joshi, the Enquiry Officer. I have no reasons to believe that his evidence is not true or that he did not hold any enquiry or that he fabricated the records. I shall therefore proceed on the basis that an enquiry was conducted and that the record of the enquiry is correct.

I find nothing improper in the manner of conducting the enquiry. At the opening, Morzo was asked if he understood the charge and if he admitted it. On his denial of the charge, Mr. Bhobe was examined. His evidence was merely formal; except for saying that he directed Souza to convey instructions to Morzo, he had obviously no personal knowledge of how the barge got grounded. Morzo was thereafter questioned about the grounding of the barge, his failure to mention it in the log sheet and also to inform the company. Souza was then examined to prove he conveyed the instructions to Morzo to take the barge to Sircaim. On his being further questioned, Morzo stated that he started for Sircaim at about 2 P. M. (as entered by him in the log sheet, Ex. D-2) and reached Khorjuem at 8 P. M. He halted there «as he was not aware of the Sircaim route.» At about 2 A. M. that night, he had the barge moved «a little out of the mainstream.» It was only next morning it was found that the barge was grounded and could not be moved except with the aid of another barge. He then proceeded to Sircaim.

As I stated, I accept the record of enquiry as correct. It is seen therefrom that Morzo himself stated that the barge got grounded sometime during the night when it was anchored near the bank and not that the grounding took place when the barge was being moved either towards or away from the bank. It was not at all stated by him that the grounding was the result of the Assistant Drivers failure to follow his (Captain's) instructions. This defence, which was not mentioned in the written-statement and is put forward for the first time before me, fails to convince me.

Some argument was advanced that the Assistant Driver was not qualified to handle this barge which is fitted with with two engines of 105 h.p. each, and that the Management was at fault in not providing a properly qualified driver. Even accepting the charge that the Assistant Driver's qualifications fall short of what the rules require, I find that the grounding was not, on Morzo's own statement during the enquiry, due to it. It was clearly due to anchoring the barge too close to the shore, the fall in the level of water due to the ebbing tide leading to the grounding. That is the conclusion which Morzo's own statement leads to.

Souza was not examined before me as he was not available to give evidence. But his evidence is really not necessary, for the fact that Morzo had instructions to proceed to Sircaim is admitted by him both in his evidence and by the entry in the log sheet. It is not Morzo's case that he had no instructions. Indeed, the charge is not that he disobeyed the instructions, but only that he handled the barge so negligently in anchoring it at an unauthorised place that it got grounded.

My conclusion is that the enquiry was properly conducted and that the finding of the Enquiry Officer is based on evidence before him. Since the merits of the case were also canvassed before me, I also find that Morzo is guilty of the charge.

I shall now recapitulate my finding and set down my directions with regard to the 49 persons dismissed by the bargeowners. It is established that the partial stoppage of work which amounted to a strike was started during the pendency of a valid agreement; that this agreement of September, 1964, did cover the question of overtime allowance; and that the Union has not established that this settlement was terminated by a notice issued to the other parties to the settlement. I hold for this reason the strike comes within the mischief of Section 23(c) and is illegal under Section 24 of the Industrial Disputes Act. The strike is also prohibited under Section 23(b) by reason of the pendency of certain proceedings before the Industrial Tribunal. I find also that in any event the strike was wholly unjustifiable for the reason that for the settlement of the dispute raised by them the workmen did not resort to the lawful machinery created under the Act.

I find further that though there are no certified standing orders, the workmen have accepted the application of the model standing orders as part of the contract of service.

I also find that these workmen were not selected out of any vindictiveness and that the allegation of victimisation made by the Union fails, for it was not established that these workmen were prominent in Union activities. At the best, some among them in their capacity as Captains were spokesmen on behalf of the crew; but even that circumstance did not colour the action of the Management.

1. The dismissal or Waman Ladu Naik is wholly unjustified, as the charges against him were not established at all. He is entitled to be reinstated in service with full wage and allowances due to him from the date of the dismissal to the date of reinstatement.

2. The dismissal of Vishnu D. Morzo is justified, as it is established that he was negligent in the handling of the barge resulting in its grounding and consequent damage to it and failed to report the matter to his employer. The specific case put forward by him belatedly that the fault was not his but that of the Assistant Driver has not been established and is, indeed, inconsistent with his own earlier statement. The order of dismissal in his regard must be sustained.

3. The dismissal of Chandrakant D. Tari cannot be sustained as there was no evidence in support of the charge that he carried a large number of persons unauthorisedly on the barge. There was no charge against him that he participated in the strike. It follows that he is entitled to be reinstated with pay and allowances from the date of dismissal to the date of reinstatement.

4. Shivadas M. Phadte: The charge of instigation has failed. As it was admitted that he was on leave during the relevant period, the charge of participation in the strike must also fail. He is accordingly entitled to be reinstated with pay and allowances from the date of dismissal to the date of reinstatement.

5. Sakharam Fotto: The removal of the barge by this Captain to Cortalim unauthorisedly and its detention there till the 20th of May has been established. This act went beyond the limits of a normal strike and amounted to an act of violence. Had this workman confined himself merely to striking work and done nothing more, it would have been possible to deal with him in the manner in which the several other striking bargecrew whose act was confined to merely striking work are dealt with hereafter. The removal of the barge and keeping it out of possession of the company is an aggravating circumstance and I feel that the punishment of dismissal in his case must be sustained.

Lakshman Paggi: His dismissal is governed by the same reasons as in the above case and is sustainable on the same grounds.

In all the remaining cases, the only charge that stands proved and has not in fact been denied at any stage is the charge of participation in the strike. One thing that has got to be borne in mind in assessing the quantum of punishment which should be inflicted upon these persons is that it was not only these persons who struck work but the entire body of bargecrew of all of these several companies well over a thousand in number and though the several companies commenced disciplinary action against all such persons, the punitive action was limited only to these few; presumably it was for the reason that the industry should not suffer. The cases against the rest were admittedly dropped by the intervention of governmental machinery and the conference at Delhi. The only argument advanced on behalf of the companies is that several of these persons who stand dismissed for participation in the strike are Captains and Drivers, persons who were in positions of greater responsibility than mere sailors, and the argument advanced was that the more serious punishment inflicted upon them is justified thereby. The argument is no doubt plausible; but in looking at a matter of this description, that isolated feature should not be permitted to govern the ultimate action. When it was a widespread strike, however ill-advised it may be, it is manifestly unfair to single out persons on the ground of their heavier responsibility. In a general strike, practically every employee of the rank and file takes part. The only rational ground of distinction should be, as decisions have laid it down, that the punishment of dismissal should be awarded to persons who have indulged in acts of violence of forcibly prevented other persons from attending work or the like. A distinction made on this basis leading to dismissal of persons who had done such acts would be a reasonable one. But persons who merely participated in the strike and played the part of more or less silent spectators should be distinguished. It would suffice to refer to *India General*

Navigation and Railway Co. Ltd. and another and Their Workmen (1960-I L.L.-L., 13) In the light of the principles enunciated in this decision, the dismissal of the remaining persons cannot be upheld. I have also pointed out that in most of these cases, the charges were many and varied, though they represented different aspects of the participation in the strike. It is virtually on the admissions of these persons and not on the basis of any proof of the charges as framed that the guilt of participation in the strike is established. It has also to be noticed that though the strikers ill-advisedly went in for a strike without resorting to the appropriate machinery under the law, since the strike was widespread and covered the entire industry, it is manifest that they had some grievance which they thought should be brought into the open.

In the decision referred to above, there was an illegal strike by the workmen employed in a public utility service. It is therein that a distinction was made between peaceful participants in the strike and those who were guilty of violence and intimidation. In that case, the Tribunal had ordered reinstatement of the peaceful strike with full back wages and allowances till reinstatement. It was observed that that would amount to wholly condoning the illegal act of the strikers and that while the act of the strikers is illegal, the enquiry held by the Management was also «not wholly regular.» In the view that blame attached to both parties, the Supreme Court directed that on reinstatement, those workers should be entitled only to half of their wages during the period in question. In the cases before me also, I have pointed out that the charges were defective and even the order of dismissal did not proceed upon a finding of participation in the partial strike, though the fact of such participation is admitted by the workmen. In these circumstances, these remaining workmen are entitled to be reinstated.

I have carefully considered the question of relief to be given to them. It is not an inflexible rule that they should be entitled to 50 per cent of the wages, as was ordered in the above Supreme Court decision — Having regard to the fact that the strike, whether or not it was illegal, was certainly wholly unjustifiable, and also for the reason that these workmen should have had some other employment during the relevant period, it would be a heavy burden upon the establishment if they are called upon to pay these workmen anything more than a third of the wage which the workmen would have received had they been working. It may be noticed that there are both small and large companies involved and since any order with regard to back pay and allowances will affect them all alike, it would be in the interests of the industry that no order that might cripple the working thereof should be made. Giving the matter careful consideration, I am of the view that while these persons will be directed to be reinstated, they will be entitled to only one-third of the wage and allowances from the dates of their dismissal to the dates of their reinstatement.

The second question before me is, during the period from 16-2-1969 to 14-5-1969, when the bargecrew worked for only 11 hours in the first instance and 8 hours later, what should be their wages and other allowances. It is not in dispute that the employers paid the bargecrew for the period from 16-2-1969 to 8-3-1969, the proportionate wage for work of 11 hours out of 24, and for the period from 9-3-1969 to 14-5-1969, the proportionate wage and allowances for 8 hours out of 24. There is no controversy that the pattern of working that obtained up to 15-2-1969 was that the bargecrew had to be on their respective barges for all the 24 hours, to undertake work as and when needed. It has also been brought out clearly in the evidence that staying on the barge for all the 24 hours in the day did not mean working for all the 24 hours and that at the most the actual work in handling the barge by the bargecrew would cover only about 10 hours. I have also found that in the settlement of September, 1964, these facts were taken into account and the wage was fixed as a composite wage and that other privileges such as weekly offs and the like were given to offset the requirement of continued presence on the barge. The evidence also establishes that under this pattern of working about 25 to 30 trips would be made by the barge per month, roughly one per day. By restricting the hours of work, undoubtedly, the number of trips that could be performed by them should have been less, though there is no direct evidence on that point. If the actual working hours were lessened by this means, there is no justification on the part of the workers to demand that full pay should nevertheless be given. I am accordingly satisfied that the wage proportionate to the number of hours of work done by them during the period 16-2-1969 to 14-5-1969, as stated above, is justified in the circumstances of the case.

Finally, I must record my appreciation of the help given to me by Mr. Damania, on behalf of the Managements, and by Mr. Sowani, on behalf of the Union, during the enquiry.

K. Srinivasan
Arbitrator,
27-5-1970

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